147U.S.676

RECORD, CASE NO. 14442.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO. 628.

THE UNITED STATES, APPELLANT,

vs.

H. H. KING.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED DECEMBER 17, 1890.

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H. H. KING
vs.
THE UNITED STATES. } *Assumpsit.* *H. H. King, &c.—Co.*

To the honorable the judge of the district court of the United States for the southern district of Georgia:

The petition of H. H. King, who avers himself to be a resident of the southern judicial district of Georgia,

Showeth, That the United States of America are indebted to your petitioner in the sum of five hundred and ninety-five dollars and sixty-five cents ($595.65) on an account, as will fully appear by reference to a bill of particulars hereto annexed and marked Exhibit A, which account the said United States of America refuses to pay. And whereas also the said United States of America afterward, to wit, on the 16th day of May, A. D. 1888, at Savannah, in said district and State aforesaid, was indebted to your petitioner in the further sum of five hundred and ninety-five dollars and sixty-five cents ($595.65) for the work and labor, care and diligence of the said petitioner before that time done, performed, and bestowed by the said petitioner in and about the business of the said defendants and for the defendants, and at their special instance and request, as will fully appear by reference to a bill of particulars hereto annexed and marked Exhibit A.

Nevertheless the said defendants, not regarding their several promises, hath not as yet paid the said several sums of money or any or either of the same, although often requested so to do, but the said defendants to pay the said petitioner the same, hath hitherto wholly neglected and refused, and still doth neglect and refuse,

To the damage of the said petitioner seven hundred dollars.

Petitioner further avers that the claim for which this suit is
2 brought is justly due him for services rendered while and as clerk of the circuit court of the United States for the southern district of Georgia, the said claim being for such services as were disallowed in his accounts by the honorable the First Comptroller of the Treasury, as set forth in the bill of particulars hereto annexed marked Exhibit A.

Wherefore your petitioner prays process may issue requiring the said United States to be and appear at the next term of said court, to be holden in the city of Savannah, on the second Tuesday in November next, to answer in the premises, and that the court may award petitioner a judgment upon the facts and the law.

H. H. KING,
Petitioner.

SOUTHERN DISTRICT OF GEORGIA, *ss.:*

Personally appeared H. H. King, who, being duly sworn, deposes and says that the facts stated in the foregoing petition are correct and true.

H. H. KING.

Sworn to and subscribed before me at Savannah, Ga., this 22d day of October, A. D. 1888.

[SEAL.] ISAAC BECKETT,
United States Circuit Court Commisssioner.

8527——1

reports 98375 and 100344.)

Personally appeared before me, in open court and in presence of Du Pont Guerry, United States attorney, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, who, first being duly sworn, says that the annexed account, amounting to five hundred and ninety-five $\frac{65}{100}$ dollars, is just and true, and that the services therein charged have been actually and necessarily performed as therein stated.

H. H. KING.

Sworn to and subscribed before me at Macon, Ga., this 25th day of Oct., 1888.

EMORY SPEER,
U. S. Judge.

4

EXHIBIT A.

The United States of America to H. H. King, dr.

For services rendered as and while clerk of the circuit court of the United States for the southern district of Georgia.

EASTERN DIVISION.

Item 1:

April 5, 11, 12, 1884. For necessary time required and services rendered in procuring and selecting 200 competent jurors from the eastern division of said district and for revising the jury box, by order of the court, 3 days, at $5 ..... 15.00

WESTERN DIVISION.

May 1, 5, 6, 1884. For necessary time required and services rendered in procuring and selecting 200 competent jurors from the western division of said district and for revising the jury box, by order of court, 3 days, at $5 ..... 15.00

EASTERN DIVISION.

Sept. 28, 29, Oct. 2, 1885. For necessary time required and services rendered in procuring and selecting competent jurors from
5 the eastern division and for revising the jury box, by order of court, 3 days, at $5 ..... 15.00

WESTERN DIVISION.

Feb'y 7, 8, 9, 1887. For necessary time required and services rendered in selecting competent jurors from the western division and for revising the jury box, by order of court, 3 days at $5 ..... 15.00

EASTERN DIVISION.

Sept. 8, 9, 10th, 1887. For necessary time required and services rendered in selecting competent jurors from the eastern division and for revising the jury box by order of court, 3 days, at $5 ..... 15.00

Item 1, total 75

(Disallowed by the Comptroller, as being a charge not warranted by law. See letter of June 14, '84 and report 86147).

Item 2:

Sept. 10, 1887. Entering names, residence, &c., of jurors on revised jury-list record, as required by rule of court No. 60, 20 f., at 15 ... 3.00

Making a copy on tickets to place in jury box, 20 f., at 10 ..... 2.00

Item 2, total 5.00

(Disallowed, as not authorized to a clerk, by Comptroller. Report 107495.)

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION—continued.

6 Item 3:

For necessary attendance in the circuit court of the United States at Macon, Ga., by L. M. Irwin, deputy clerk, the following days, to wit: October, 1885; adjourned term, March 22, 1886; business transacted May, 1886; term May 3, 4, 5, 6th, 1886, under the provisions of sections 671, 672, R. S., five (5) days, *a* 5 ..... 25.00

(Disallowed by the Comptroller because the clerk had been allowed per diem for his personal attendance on the court at Savannah on the same days, the Comptroller holding that clerk entitled to but one per diem for any one day, although court may be in session at 2 places & the clerk represented at one of the places by deputy. Report 98575.)

For necessary attendance in the circuit court of the United States at Savannah, Ga., by H. H. King, clerk, in person, at November, 1887, term, on Dec. 12, 1887, said court being held by Circuit Judge Pardee, and business actually transacted, one (1) day, *a* 5..... 5.00

(Disallowed by the Comptroller because per diem for same day was allowed to the clerk for the attendance of his deputy at a session of the court at Macon, Ga., the court having been held there by Judge Speer. See Report 107436.)

Item 3, total 30.00

7 Item 4:

For amount deducted by the First Comptroller from clerk's account rendered for period July 1 to Nov. 2, 1885, western division, as a disallowance, per report 94252, as following:

All charges for seals to copies of orders to pay witnesses disallowed. See letter of Feb'y 3, 1884, to the clerk from the First Comptroller. 2.20

(An examination of said account will show that there are no charges therein for seals to copies of orders to pay witnesses, and therefore the said deduction from the amount otherwise found due the clerk in said report is erroneous.)

Item 4, total..... 2.20

WESTERN DIVISION.

Item 5:

March 22, '86. Entering names of grand jurors drawn from the box for May term, 1886, 2 f., *a* 15..... .30

" " Entering order directing venire to issue, 15c.; filing, 10. .25

June 7, '86. Entering return of venire T. jury, 15; filing, 10 ..... .25

" " " " " " G. " 15; " 10..... .25

WESTERN DIVISION.

Oct. 4, '86. " " " " T. " 15; " 10..... .25

" Entering names of trav. jurors reported..... .15

" " " talesmen summoned..... .15

" " return of venire G. jury, 15; filing, 10..... .25

" " names of G. jurors reported ..... .15

" " order for talesmen ..... .15

" Entering names of talesmen summoned ..... .15

8 Oct. 7, '86. Ent'g order for talesmen for T. jury ..... .15

" " " names of " returned..... .15

Oct. 11, '86. " order for talesmen for E jury ..... .15

" " " names " returned..... .15

" " " names for G. jurors in attendance..... .15

Oct. 30, '86. Ent'g names, &c., of T. jurors drawn from box for May term, 1887, venires, 2 f., *a* 15..... .30

" Ent'g order for venires, 15; filing, 10..... .25

" Ent'g names, &c., of G. jurors drawn from box for May term, 1887. Venire, 15; filing, 10..... .25

Item 5, total..... 3.85

(Disallowed by the Comptroller because, as he alleges, all the above charges are unauthorized by the fee bill, and because they are covered by the docket fee. See reports 98375 and 100344.)

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION.

Item 6:

U. S. vs. Henry Jones, indict. No. 187:

July 8, '87. Filing order of nolle prosequi ..... .10

U. S. vs. W. C. McLane, indict. No. 201:

July 1, '87. Filing order of nolle prosequi ..... .10

Disallowed by the Comptroller because he alleges it is unnecessary to file such orders. See report 105372).

Item 6, total ..... .20

9 WESTERN DIVISION.

Item 7:

U. S. vs. Rudolph Denicke, indictment:

Sept. 15, 1886. Issuing 3 writs of subpœna witnesses in localities not convenient for service in fewer writs, @ 25 ..... .75

Ent'g 15 and filing 10 returns, 3, @ 25 ..... .75

U. S. vs. Henry Jones, indictment:

Sept. 15, '86. Issuing 12 writs subpœna witnesses in localities not convenient for service in fewer writs, @ 25 ..... 3.00

Ent'g 15 and filing 10 returns, 12, @ 25 ..... 3.00

U. S. vs. Will R. Jackson, indictment:

Sept. 15, '86. Issuing 9 writs of subpœna witnesses in localities not convenient for service in fewer writs, @ 25 ..... 2.25

Ent'g 15 and filing 10 returns, 9, @ 25 ..... 2.25

U. S. vs. T. W. Faircloth, indict:

Sept. 18, '86. Issuing 2 writs of subpœna witnesses in localities not convenient for service in fewer writs, @ 25 ..... .50

Ent'g 15 and filing 10 returns ..... .50

U. S. vs. F. C. Marks, indict:

Oct. 13, 86. Issuing 1 writ of subpœna ..... .25

Ent'g and filing returns ..... .25

U. S. vs. Rudolph Denicke, indict:

Issuing 1 writ of subpœna ..... .25

Ent'g and filing return ..... .25

Item 7, total 14.00

(Disallowed, per reports 100344 and 108425, because there was more than one writ issued on same date.)

10 Item 8:

United States vs. John Clayton. Proceedings before the judge for removal of deft. to northern dist. Ga., under provisions sec. 1014 R. S.

Feb'y 7, '88. Issuing commitment to Bibbs Co. jail pending hearing before the judge for warrant of removal 1.00

Making copy for jailer, 4 f., 40; costs, 15; seal, 20 ..... .75

Ent'g & filing return ..... .25

Docket & indexes 1.00

Item 8, total 3.00

(Disallowed by Comptroller because unnecessary, "and" because such proceedings do not constitute a case. See report 108425.)

Item 9:

For filing each separate paper in cases sent up to clerk's office by commissioners, as required by rule of court after preliminary examination in criminal cases:

Western	division,	July 1 to Nov. 2, '85,	papers, @ 10	3.60
Eastern	"	July 1 to Dec. 31, '86, 7	" "	.70
"	"	Apr. 11 to June 4, 87, 13	" "	1.30
Western	"	Jan'y 1 to June 30, '87, 11	" "	1.10
Western	"	July 1 to July 9, '87, 2	" "	.20
Eastern	"	Jan. 1 to Jan. 28, '88, 18	" "	1.80
Western	"	Jan. 1 to Apr. 7, '88, 32	" "	3.20

Item 9, total 11.90

11 (Disallowed by the Comptroller per reports 94252, 101090, 103450, 103985, 105372, 107495, 108425; the Comptroller alleges that it is the duty of the commissioner or of the clerk to fasten all the papers sent up by the court together and file them as one.)

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION.

Item 10:

May 4, '85. Entering order approving 1 account of H. H. King, clerk, 2 f., @ 15 ..... .30
Making copy to transmit, 20; cert., 15; seal, 20; filing 1 acc't, 10 ..... .65

EASTERN DIVISION.

Dec. 4, '85. Entr'g order approving acc't of D. N. King, stenographer, case Mayso et al., 2 f., 30; filing, 10 ..... .40

EASTERN DIVISION.

Feb'y 26, '87. Ent'g order approving 1 acc't L. M. Lamar, Mar., 2 f ..... .30
Making copy to transmit, 20; cert., 15; seal, 20; filing 1 acc't, 10 ..... .65
April 2, '87. Ent'g order approving 1 acc't R. D. Locke, comm., 2 f ..... .30
Making copy to transmit, 20; cert., 15; seal, 20; filing 1 acc't, 10 ..... .65

EASTERN DIVISION.

April 13, '87. Ent'g order approving 1 acc't H. H. King, clerk, 2 f ..... .30
Making copy to transmit, 20; cert., 15; seal, 20; filing 1 acc't, 10 ..... .65

EASTERN DIVISION.

Jan. 6, '88. Ent'g order approving 1 acc't H. H. King, clerk, 2 f ..... .30
Making copy to transmit, 20; cert., 15; seal 20; filing 1 acc't, 10 ..... .65
Jan'y 23, '88. Ent'g order approving 1 acc't H. H. King, clerk, 2 f ..... .30
Making copy to transmit, 20; cert., 15; seal, 20; filing 1 acc't, 10 ..... .65

Item 10, total 6.10

(Disallowed by Comptroller, per reports 94651, 95391, 102601, 103450, 107495, as charges not payable by the United States.)

12 WESTERN DIVISION.

Item 11:

United States vs. Isaac Thomason. Indict., conviction, sentenced to Butts Co. jail. Escape, alias bench warrant issued. Deft. arrested and brought before the court Oct. 6, 1886:

Oct. 6, '86. Issuing temporary commitment to Bibb Co. jail to await the further order of the court 1.00
Making copy for jailer, 4 f., 40; cert., 15; seal, 20 ..... .75
Entering & filing marshal return ..... .25
Oct. 7, '86. Entering order for commitment of dft. to Bibb Co. jail to serve out the unexpired term of his sentence, 2 f., 30; [illegible]ng, 10 ..... .40
Making copy order for jailer, 20; cert., 15; seal, 20 ..... .55
Ent'g & filing marshal return of service of same ..... .25
Making copy of the original sentence for jailer of Bibb Co., 2 f., 20; cert., 15; seal, 20 ..... .55
Oct. 29, '86. Ent'g order as to confinement of deft. in jail, 15; filing, 10. .25

Item 11, total 4.00

(Disallowed by the Comptroller for the following alleged reason: "It seems that the only thing that was necessary was to have him arrested & put in prison, and the bench warrant should have commanded the marshal to commit the defendant to prison." See report 100344.)

13 EASTERN DIVISION.

Item 12:

Feb'y 16, '86. Entering order of court on presentation to the court by the bar of the portrait of Hon. John C. Nicoll, ex-U. S. judge for so. dist. of Ga., 10 f., @ 15, 1.50; filing, 10 ..... 1.60
May 17, '87. Ent'g order of court on suggestion of death of Hon. W. B. Woods, associate justice of Supreme Court of the United States for 5th circuit, 2 f., 30; filing, 10 ..... .40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION—continued.

May 31, '87. Entering proceedings had in memoriam in the court on the death of Associate Justice W. B. Woods by order of court, 16 f., @ 15 ..... 2.40

Item 12, total 4.40

(Disallowed by Comptroller as not properly chargeable to the United States. See reports 10034 and 103450.)

WESTERN DIVISION.

Item 13:

May 6, 8, 23, 28, 29, 1885. Filing 5 orders to pay fees of T. jurors, @ 10.... .50

U. S. vs. John S. Summerford, crim. inform:

May 8, 13, 22, 1885. Filing 3 orders to pay witnesses, @ 10..... .30

U. S. vs. Jack Bundley:

May 12, '85. Filing 1 order to pay witnesses ..... .10

U. S. vs. Willis Benton:

May 27, '85. Filing 1 order to pay witnesses..... .10

U. S. vs. Wm. Jordan:

May 6, 21, '85. Filing 2 orders to pay witnesses..... .20

U. S. vs. Geddings Kitchens:

May 14, '85. Filing order to pay witnesses..... .10

14 U. S. vs. Jas. T. Stewart:

May 13, 14, 1885. Filing 2 orders to pay witnesses..... .20

U. S. vs. Wm. Carr:

May 14. Filing 1 order to pay witnesses..... .10

U. S. vs. Bigum:

May 25, 27, 1885. Filing 2 orders to pay witnesses..... .20

U. S. vs. Henry Jones:

May 25, 1885. Filing 1 order to pay witnesses..... .10

U. S. vs. Sanders Green:

May 11, 1885. Filing 1 order to pay witnesses ..... .10

U. S. vs. Russell Rogers:

May 9, 1885. Filing 1 order to pay witnesses..... .10

U. S. vs. Charles Williamson:

May 21, '85. Filing 1 order to pay witnesses..... .10

U. S. vs. Amos Roberts:

May 12, '85. Filing order to pay witnesses..... .10

U. S. vs. Henry Clark:

May 26, '85. Filing 1 order to pay witnesses..... 10

U. S. vs. Oscar Thomas:

May 27, 28, '85. Filing 2 orders to pay witnesses ..... .20

For drawing reports of the amounts due by the United States to jurors & witnesses for travel & attendance for the approval of the court, as required by sections 855, 846, R. S., and for filing the orders to pay the same, as follows:

EASTERN DIVISION.

1886.

Jan'y 13. Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10..... .40

" 14. " " " " " " 2 f., 30; " " 10 .40

" 15. " " " " " " 2 f., 30; " " 10. .40

15 Jan. 17. Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10 ..... .40

" 18. " " " " 2 f., 30; " 10. .40

" 21. " " " " 2 f., 30; " 10. .40

" 22. " " " " 2 f., 30; " 10. .40

" 23. " " " " 2 f., 30; " 10. .40

" 25. " " " " 2 f., 30; " 10. .40

" 26. " " " " 2 f., 30; " 10. .40

" 30. " " " " 2 f., 30; " 10. .40

Feb'y 4. " " " " 2 f., 30; " 10. .40

" 12. " " " " 2 f., 30; " 10. .40

" 18. " " " " 2 f., 30; " 10. .40

" 19. " " " " 2 f., 30; " 10. .40

" 26. " " " " 2 f., 30; " 10. .40

Mch. 10. " " " " 2 f., 30; " 10. .40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION.

1886.

Oct. 4. Drawing report of fees due G. jurors, 2 f., 30; filing order to pay, 10 ..... .40

" " " " " T. " 2 f., 30; " 10. .40

" 5. " " " T. " 2 f., 30; " 10. .40

" 9. " " " G. " 2 f., 30; " 10. .40

" " " " " T. " 2 f., 30; " 10. .40

" 14. " " " G. " 2 f., 30; " 10. .40

" 16. " " " T. " 2 f., 30; " 10. .40

" 23. " " " " " 2 f., 30; " 10. .40

" 25. " " " " " 2 f., 30; " 10. .40

" 30. " " " " " 2 f., 30; " 10. .40

EASTERN DIVISION.

1886.

Nov. 16. " " " T. " 2 f., 30; " 10. .40

" 17. " " " G. " 2 f., 30; " 10. .40

" 19. " " " G. " 2 f., 30; " 10. .40

" 26. " " " T. " 2 f., 30; " 10. .40

Dec. 4. " " " G. " 2 f., 30; " 10. .40

" " " " " T. " 2 f., 30; " 10. .40

16 Dec. 9. Drawing report of fees due G. jurors, 2 f., 30; filing order to pay, 10 ..... .40

Dec. 11. Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10 ..... .40

" 15. " " " G. " 2 f., 30; " " 10. .40

" 16. " " " G. " 2 f., 30; " " 10. .40

" 18 " " " T. " 2 f., 30; " " 10. .40

" 23. " " " T. " 2 f., 30; " " 10. .40

" 24. " " " T. " 2 f., 30; " " 10. .40

EASTERN DIVISION.

1887.

Jan. 1. " " " G. " 2 f., 30; " " 10. .40

" 12. " " " T. " 2 f., 30; " " 10. .40

" 14. " " " T. " 2 f., 30; " " 10. .40

" 15. " " " T. " 2 f., 30; " " 10. .40

" 17. " " " T. " 2 f., 30; " " 10. .40

" 23. " " " T. " 2 f., 30; " " 10. .40

" 26. " " " T. " 2 f., 30; " " 10. .40

" 28. " " " T. " 2 f., 30; " " 10. .40

" 29. " " " T. " 2 f., 30; " " 10. .40

Feb. 5. " " " T. " 2 f., 30; " " 10. .40

" 7. " " " T. " 2 f., 30; " " 10. .40

" 8. " " " T. " 2 f., 30; " " 10. .40

" 9. " " " T " 2 f., 30; " " 10. .40

" 11. " " " T. " 2 f., 30; " " 10. .40

" 12. " " " T. " 2 f., 30; " " 10. .40

" 14. " " " T. " 2 f., 30; " " 10. .40

" 24. " " " T. " 2 f., 30; " " 10. .40

" 28. " " " T. " 2 f., 30; " " 10. .40

Mch. 1. " " " T. " 2 f., 30; " " 10. .40

" 3. " " " T. " 2 f., 30; " " 10. .40

" 4. " " " T. " 2 f., 30; " " 10. .40

" 5. " " " T. " 2 f., 30; " " 10. .40

Mch. 12. Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10 ..... .40

17 Mch. 15. Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10 ..... .40

Mch. 25. " 2 f., 30; " 10. .40

" 26. " 2 f., 30; " 10. .40

" 28. " 2 f., 30; " 10. .40

" 30. " 2 f., 30; " 10. .40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION.

1887.							
Apr. 12.	Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10						.40
" 13.	"	G. jurors,	2 f., 30;	"	10.		.40
" 14.	"	"	2 f., 30;	"	10.		.40
" 15.	"	T. "	2 f., 30;	"	10.		.40
" 23.	"	T. "	2 f., 30;	"	10.		.40
May 4.	"	T. "	2 f., 30;	"	10.		.40
" 9.	"	T. "	2 f., 30;	"	10.		.40
" 10.	"	G. "	2 f., 30;	"	10.		.40
" 12.	"	G. "	2 f., 30;	"	10.		.40
" 13.	"	T. "	2 f., 30;	"	10.		.40
" 14.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40
" 20.	"	T. "	2 f., 30;	"	10.		.40
" 21.	"	T. "	2 f., 30;	"	10.		.40
" 23.	"	T. "	2 f., 30;	"	10.		.40
" 26.	"	T. "	2 f., 30;	"	10.		.40
" "	"	G. "	2 f., 30;	"	10.		.40
" 27.	"	T. "	2 f., 30;	"	10.		.40
" 31.	"	G. "	2 f., 30;	"	10.		.40

WESTERN DIVSION.

1887.							
June 6.	"	T. jurors,	2 f., 30;	"	10.		.40
" 9.	"	T. "	2 f., 30;	"	10.		.40
" 13.	"	T. "	2 f., 30;	"	10.		.40
" 16.	"	T. "	2 f., 30;	"	10.		.40
" 17.	"	T. "	2 f., 30;	"	10.		.40
	June 17.	T. "	2 f., 30;	"	10.		.40
18	June 20. Drawing report of fees due G. jurors, 2 f., 30; filing order to pay						.40
June 21.	Drawing reports of fees due G. jurors, 2 f., 30; filing orders to pay, 10						.40
" 23.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40
" 24.	"	T. "	2 f., 30;	"	10.		.40
" 25.	"	T. "	2 f., 30;	"	10.		.40
" 27.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40
" 28.	"	T. "	2 f., 30;	"	10.		.40
" 29.	"	T. "	2 f., 30;	"	10.		.40
" 30.	"	T. "	2 f., 30;	"	10.		.40

WESTERN DIVISION.

1887.							
July 1.	"	T. "	2 f., 30;	"	10.		.40
" 2.	"	T. "	2 f., 30;	"	10.		.40
" 5.	"	T. "	2 f., 30;	"	10.		.40
" 8.	"	T. "	2 f., 30;	"	10.		.40

EASTERN DIVISION.

1887.							
Nov. 10.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40

WESTERN DIVISION.

1887.							
Oct. 3.	"	T. "	2 f., 30;	"	10.		.40
" 4.	"	G. "	2 f., 30;	"	10.		.40
" 5.	"	G. "	2 f., 30;	"	10.		.40
" 7.	"	G. "	2 f., 30;	"	10.		.40
" 8.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40
" 14.	"	G. "	2 f., 30;	"	10.		.40
" "	"	T. "	2 f., 30;	"	10.		.40
" 15.	"	T. "	2 f., 30;	"	10.		.40
" 21.	"	T. "	2 f., 30;	"	10.		.40
" 22.	"	T. "	2 f., 30;	"	10.		.40
" 24.	"	G. "	2 f., 30;	"	10.		.40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION—continued.

1887.							
Nov. 25.	Drawing report of fees due G. jurors, 2 f., 30; filing order to pay, 10						.40
19 Oct. 28.	Drawing report of fees due G. jurors, 2 f., 30; filing order to pay, 10						.40
Oct. 28.	Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10						.40
" 29.	"	G.	"	2 f., 30;	"	10.	.40
" 31.	"	T.	"	2 f., 30;	"	10.	.40
" "	"	G.	"	2 f., 30;	"	10.	.40
Nov. 1.	"	G.	"	2 f., 30;	"	10.	.40
" 4.	"	T.	"	2 f., 30;	"	10.	.40
" 5.	"	T.	"	2 f., 30;	"	10.	.40
" 8.	"	T.	"	2 f., 30;	"	10.	.40
" 9.	"	T.	"	2 f., 30;	"	10.	.40
" 18.	"	T.	"	2 f., 30;	"	10.	.40
" 19.	"	T.	"	2 f., 30;	"	10.	.40
" 22.	"	G.	"	2 f., 30;	"	10.	.40
" 26.	"	T.	"	2 f., 30;	"	10.	.40
Dec. 1.	"	T.	"	2 f., 30;	"	10.	.40
" 2.	"	T.	"	2 f., 30;	"	10.	.40
" 5.	"	T.	"	2 f., 30;	"	10.	.40
" 8.	"	T.	"	2 f., 30;	"	10.	.40
" 10.	"	G.	"	2 f., 30;	"	10.	.40
" 17.	"	T.	"	2 f., 30;	"	10.	.40
" 22.	"	T.	"	2 f., 30;	"	10.	.40
" 23.	"	T.	"	2 f., 30;	"	10.	.40
" 24.	"	T.	"	2 f., 30;	"	10.	.40
" "	"	G.	"	2 f., 30;	"	10.	.40
" 28.	"	T.	"	2 f., 30;	"	10.	.40

EASTERN DIVISION.

1888.							
Jan. 4.	"	T.	"	2 f., 30;	"	10.	.40
" "	"	G.	"	2 f., 30;	"	10.	.40
" 5.	"	G.	"	2 f., 30;	"	10.	.40
" 6.	"	T.	"	2 f., 30;	"	10.	.40
Jan. 9.	Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10						.40
20 Jan. 13.	Drawing report of fees due T. jurors, 2 f., 30; filing order to pay, 10						.40
Jan. 14.	"	T.	"	2 f., 30;	"	10.	.40
" 18.	"	T.	"	2 f., 30;	"	10.	.40
" 25.	"	T.	"	2 f., 30;	"	10.	.40
" 27.	"	G.	"	2 f., 30;	"	10.	.40
" 28.	"	T.	"	2 f., 30;	"	10.	.40

WESTERN DIVISION.

1888.							
Feb'y 15.	"	T.	"	2 f., 30;	"	10.	.40
" 16.	"	T.	"	2 f., 30;	"	10	.40
" 17.	"	T.	"	2 f., 30;	"	10.	.40
" 18.	"	T.	"	2 f., 30;	"	10.	.40
" 20.	"	T.	"	2 f., 30;	"	10.	.40
" 23.	"	T.	"	2 f., 30;	"	10.	.40
M'ch 2.	"	T.	"	2 f., 30;	"	10.	.40
" 6.	"	T.	"	2 f., 30;	"	10.	.40
" 15.	"	T.	"	2 f., 30;	"	10.	.40
" 16.	"	T.	"	2 f., 30;	"	10.	.40
" 21.	"	T.	"	2 f., 30;	"	10.	.40
" 23.	"	T.	"	2 f., 30;	"	10.	.40
" 27.	"	T.	"	2 f., 30;	"	10.	.40
" 29.	"	T.	"	2 f., 30;	"	10.	.40
Apr. 5.	"	T.	"	2 f., 30;	"	10.	.40
" 7	"	T.	"	2 f., 30;	"	10.	.40

Exhibit A.—*The United States of America to H. H. King dr.*—Continued.

WESTERN DIVISION.

U. S. vs. John D. Summerford:

1885.

May 8. Drawing report of fees due witnesses, 2 f., 30; filing order to pay, 10 ..... .40
" 13. " " " 2 f., 30; " 10. .40
" 22. " " " 2 f., 30; " 10. .40

U. S. vs. Jack Bundley:

May 12. Drawing report of fees due wits., 2 f., 30; filing order to pay, 10 ..... .40

21 U. S. vs. Willis Benton:

May 27. Drawing report of fees due wits., 2 f., 30; filing order to pay, 10 ..... .40

U. S. vs. Wm. Jordan:

May 9. Drawing and filing report wits., as above ..... .40
" 21. .....do ..... .40

U. S. vs. Giddings Kitchens:

May 14. Drawing and filing report wits., as above ..... .40

U. S. vs. Jas. T. Stewart:

May 13. Drawing and filing reports wits., as above ..... .40
" 14. .....do ..... .40

U. S. vs. Wm. Carr:

May 14. Drawing and filing reports wits., as above ..... .40

U. S. vs. Ned Begum:

May 25. Drawing and filing reports, &c., as above ..... .40
" 27. .....do ..... .40

U. S. vs. Henry Jones:

May 25. Drawing report, filing order to pay wits., as above ..... .40

U. S. Sanders Green:

May 11. Drawing report, filing orders to pay wits., as above ..... .40

U. S. Russell Rogers:

May 9. Drawing report, filing orders to pay wits., as above ..... .40

U. S. vs. Charles Williamson:

May 21. Drawing report, filing order to pay wits., as above ..... .40

U. S. vs. Amos Roberts:

May 12. Drawing report, filing orders to pay wits., as above ..... .40

U. S. vs. Henry Clark:

May 26. Drawing reports, filing orders to pay wits., as above ..... .40

U. S. vs. Oscar Thomas:

May 27. Drawing report, filing orders to pay, as above ..... .40
" 28. .....do ..... .40

22 EASTERN DIVISION.

U. S. vs. Thomas Johnson et al.:

1886.

Jan. 22. Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10 ..... .40
" 23. .....do ..... .40
" 26. .....do ..... .40

WESTERN DIVISION.

U. S. vs. Thomas Brownlee:

1886.

Oct. 23. Drawing report of fees due witnesses, 2 f., 30, filing orders to pay, 10 ..... .40

U. S. vs. Lucius Brownlee:

Oct. 23. Drawing report of fees due witnesses, 2 f., 30; filing order, 10. .40

U. S. vs. Thomas Smith:

Oct. 6. Drawing report of fees due witnesses, 2 f., 30; filing order to pay, 10 ..... .40
" 23. .....do ..... .40
" 25. .....do ..... .40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION—continued.

1886.		U. S. vs. Rudolph Denicke:	
Oct.	22.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
"	23.	.....do	.0
		U. S. vs. Henry Jones:	
Oct.	21.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
		U. S. vs. Will R. Jackson:	
Oct.	18.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
"	19.	.....do	.40
"	20.	.....do	.40
"	21.	.....do	.40
"	30.	.....do	.40
		U. S. vs. T. W. Faircloth:	
Oct.	7.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
		U. S. vs. Wm. E. McClosky:	
Oct.	6.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
		U. S. vs. Addie Fulton:	
Oct.	8.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
"	16.	.....do	.40
	20.	.....do	.40
23		U. S. vs. F. C. Macks:	
	Oct.	12. Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
Oct.	13.	.....do	.40
"	15.	.....do	.40
		U. S. vs. W. C. McLane:	
Oct.	13.	Drawing report of fees due witnesses, 2 f., 30; filing orders to pay, 10	.40
"	20.	.....do	.40

EASTERN DIVISION.

		U. S. vs. N. S. Lary:	
1886.			
Nov.	19.	Drawing report of fees dues wits., 2 f., 30; fil'g orders to pay, 10	.40
"	26.	.....do	.40
		U. S. vs. Joseph M. Brown:	
Nov.	26.	Drawing report of fees due wits., 2 f., 30; filing orders to pay, 10	.40
Dec.	22.	.....do	.40
		U. S. vs. Wm. H. Lang:	
Nov.	16.	Drawing report of fees due wits., 2 f., 30; filing orders to pay, 10	.40
		U. S. vs. John A. Long:	
Nov.	17.	Drawing report of fees due wits., 2 f., 30; filing order to pay, 10	.40
Dec.	23.	.....do	.40
		U. S. vs. Frank Phillips:	
Nov.	18.	Drawing report of fees due wits., 2 f., 30; filing order to pay, 10	.40
Dec.	22.	.....do	.40
		U. S. vs. Prucius Singleton:	
Dec.	16.	Drawing report of fees due witnesses, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. Murray Jackson:	
Dec.	8.	Drawing report of fees due witnesses, 2 f., 30; filing order to pay, 10	.40
"	17.	.....do	.40
		U. S. vs. Geo. Butler:	
Dec.	10.	Drawing report of fees due witnesses, 2 f., 30; filing order to pay, 10	.40
"	23.	.....do	.40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION—continued.

24	1886.	U. S. vs. Eziah Armstrong:	
	Dec.	9. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
Dec.	17.	.....do	.40
"	21.	.....do	.40
"	23.	.....do	.40
		U. S. vs. Geo. B. Nash:	
Dec.	14.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay.	.40
		U. S. vs. L. M. Pleasants:	
Dec.	15.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. Duncan McLean:	
Nov.	19.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
Dec.	7.	.....do	.40
		U. S. vs Kate McEvady:	
Nov.	16.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. Henry Tyson:	
Nov.	17.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
"	18.	.....do	.40
		U. S. vs. Patsy Swaine:	
Nov.	18.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. A. N. Mobley:	
Dec.	14.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40

EASTERN DIVISION.

	1887.	U. S. vs. Joseph M. Brown:	
Feb'y	8.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. John. A. Long:	
Feb'y	4.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
M'ch	5.	.....do	.40
		U. S. vs. Geo. Butler:	
Feb'y	5.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
		U. S. vs. Elijah Armstrong:	
Feb'y	5.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
	Feb'y	8. .....do	.40
25		U. S. vs. L. M. Pleasants:	
	Feb'y	11. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
M'ch	2.	.....do	.40
"	3.	.....do	.40
		U. S. vs. Harry Palmer, No. 226:	
Feb'y	16.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
"	19.	.....do	.40
		U. S. vs. Harry Palmer, No. 227:	
M'ch	3.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
"	5.	.....do	.40
"	10.	..... do	.40
		U. S. vs. Jerry Hunter:	
M'ch	11.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
"	22.	.....do	.40
		U. S. vs. Paul A. Bryan:	
M'ch	11.	Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10	.40
"	24.	.....do	.40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION.

1887. U. S. vs. Paul A. Bryan:
Apr. 13. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
May 10. .....do ..... .40
" 31. .....do ..... .40

U. S. vs. Jake Small:
Apr. 13. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. Henry Smith:
Apr. 11. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 13. .....do ..... .40

U. S. vs. Wm. Beyers:
May 11. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
May 19. .....do ..... .40

26 U. S. vs. R. F. Herrington:
Apr. 12. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
Apr. 18. do ..... .40
May 31. do ..... .40

U. S. vs. A. L. Crowley:
May 19. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. Wm. Williams et al:
Apr. 11. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 27. .....do ..... .40
May 18. .....do ..... .40
" 30. .....do ..... .40

WESTERN DIVISION.

1887. U. S. vs. Lucius Brownlee:
June 15. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .... .40

U. S. vs. H. H. Lamb:
June 15. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. Wm. H. Hall:
June 13. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. Wm. H. Steel:
June 14. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 28. .....do ..... .40

U. S. vs. Miles Ridgeway:
June 14. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .... .40

U. S. vs. Monroe Gray:
June 15. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .... .40

U. S. vs. Wm. Lynch:
June 15. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. Roscoe Norton:
June 17. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40

U. S. vs. John W. Barkley:
June 20. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .40

27 U. S. vs. John W. Barclay:
June 21. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 28. .....do ..... .40
" 30. .....do ..... .40

U. S. vs. John R. Hill:
June 21. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 29. .....do ..... .40
" 30. .....do ..... .40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION—continued.

1887. U. S. vs. Henry Jones:
June 23. Drawing report of fees due wit's, 2 f., 30; fil'g order to pay, 10 ..... .40
" 27. .....do ..... .40
" 30. .....do ..... .40
July 1. .....do ..... .40
" 2. .....do ..... .40
" 8. .....do ..... .40
1887. U. S. vs. I. H. Marks:
July 7. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10.. .40

WESTERN DIVISION.

1887. U. S. vs. Wm. H. Steele:
Oct. 12. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .... .40
U. S. vs. James Hummock:
Oct. 3. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 .... .40
U. S. vs. J. H. Marks:
Oct. 16. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10.... .40
U. S. vs. Abram Yancy:
Oct. 4. Drawing report of fees due wit's, 2 f., 30; filing order, 10... .40
" 10. .....do ..... .40
" 17. .....do ..... .40
U. S. vs. Geo. F. Browning:
Oct. 14. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10. .40
28 U. S. vs. Chas. F. Abbott:
Oct. 19. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10. .40
U. S. vs. John J. Kinard:
Nov. 17. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40
U. S. vs. Cudjo Whitehead:
Nov. 17. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 ..... .40
" 18. .....do ..... .40

EASTERN DIVISION.

U. S. vs. Paul A. Bryan:
1888.
Jan. 28. Drawing report of fees due wit's, 2 f., 30; filing order, 10..... .40
" 27. .....do ..... .40
" 28. .....do ..... .40
U. S. vs. Adolph Lipschutz:
Jan. 26. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 ..... .40
U. S. vs. Edward Glover:
Jan. 10. Drawing report of fees due wit's 2 f., 30; fil'g order, 10..... .40
U. S. vs. F. W. Wilcox:
Jan. 10. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 ..... .40
U. S. vs. Lewis Crosby:
Jan. 10. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40
U. S. vs. Otto Johnson:
Jan. 25. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40

WESTERN DIVISION.

U. S. vs. Rudolph Denicke:
1888.
Mch. 28. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40
" 29. .....do ..... .40
U. S. vs. Green Fowler:
Mch. 23. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 ..... .40
U. S. vs. W. H. Steele:
Mch. 23. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10. .40
29 U. S. vs. John W. Parker:
Mch. 22. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10. .40
U. S. vs. Doll Pitts:
Mch. 1. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40
U. S. vs. John Lewis:
Mch. 2. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10 ..... .40
U. S. vs. Emanuel Lindsey:
Feb'y 29. Drawing report of fees due wit's, 2 f., 30; fil'g order, 10..... .40

Item 13, total 135.40

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION—continued.

Recapitulation of item 13:

Drawing reports of fees due wit's & jurors	99.60
Filing orders to pay same	35.80

(Disallowed by the Comptroller as follows: "Charges for drawing reports of attendance of witnesses and jurors in addition to entering such orders and making copies thereof for the marshal are disallowed as unnecessary. If it is claimed that it is necessary to draw up such orders before entering them of record such orders so drawn up should be given to the marshal after they have been entered. It is not necessary that the original orders or copies thereof should be filed with the account of the marshal, which is filed in the clerk's office, because they are recorded." See reports 92285, 96929, 100344, 101690, 102601, 103450, 103985, 105372, 107436, 106688, 107495, 108425.)

30 EASTERN DIVISION.

Item 14:

United States vs. James Swannigan. Indicted. Perjury.

Nov. 25, 85. Issuing writ of commitment to Chatham Co. jail to await trial	1.00
Making copy for jailer, 4 f., 40; cert., 15; seal, 20	.75
Ent'g & filing marshal's returns	.25

United States vs. Wm. T. Mozoo. Indic't conspiracy:

Nov. 25, 85. Issuing writ of commitment to Chatham Co. jail pending adjournment of trial f'm day to day	1.00
Making copy for jailer, 4 f., 40; cert. 15; seal, 20	.75
Ent'g & filing marshal's return	.25

(Disallowed, per report 95395, because "the warrant of arrest was sufficient to hold them.")

Total, item 14	4.00

WESTERN DIVISION.

Item 15:

U. S. vs. Wm. H. Steele:

1887.

Oct. 13. Attaching seal to certificate copy of temporary commitment for Bibb Co. jailer	.20
Oct. 14. Attaching seal to cert'd copy final commitment under sentence for jailer	.20

U. S. vs. Abram Yancy:

Oct. 13. Attaching seal to cert'd copy temp. commitm'nt	.20

U. S. vs. J. J. Kinard:

Nov. 17. Attaching seal to cert'd copy comm't under sentence	.20

U. S. vs. Cudjo Whitehead:

Nov. 18. Attaching seal to cert'd comm't under sentence	.20

31 U. S. vs. Lewis Stiles:

Nov. 29. Attaching seal to cert'd copy commi't under sentence.	.20

U. S. vs. Joshua Nelson:

Nov. 30. Attaching seal to cert'd copy commi't under sentence	.20

U. S. vs. W. J. Thomasson:

Dec. 12. Attaching seal to cert'd copy comm't under sentence	.20

EASTERN DIVISION.

U. S. vs. Edward Glover.

1888.

Jan. 24. Attaching seal to cert. copy comm't under sentence	.20

WESTERN DIVISION.

U. S. vs. Doll Pitts:

1888.

Mch. 1. Attaching seal to cert. copy commt'nt under sentence	.20

U. S. vs. Emanuel Lindsay:

Feb'y 29. Attaching seal to cert. copy comm't under sentence.	.20

U. S. vs. Michael Armstrong:

Mch. 23. Attaching seal to cert. copy commi't under sentence	.20
Items 15, total	2.40

(Disallowed by Comptroller as not necessary. Report 106688, 107495, 108425.)

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION.

1886.

Item 16:

July	3.	Ent'g order appointing a deputy clerk, 2 f., 30; filing, 10 ...	.40
		Filing oath of office of same	.10
July	24.	Entering order appointing S. A. Darnell, U. S. attorney, under s c. 793 R. S., 15c; filing, 10	.25
		Ent'g oath of office, 30; filing, 10	.40
Nov.	8.	Ent'g order appointing E. C. Wade U. S. com'r, 2 f., 30; filing, 10	.40
		Filing oath of office of same	.10
		Item 16, total	1.65

(Disallowed by the Comptroller as not being payable by the United States. Report, 101690.)

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EASTERN DIVISION.

Item 17:

1887.

Apr.	12.	Ent'g names of G. Juror on return of indictment into court .	.15
Apr.	13.	Do	.15
May	10.	Do	.15
		Item 17, total	.45

(Disallowed by the Comptroller as not necessary.)

EASTERN DIVISION.

Item 18:

1887.

United States vs. A. L. Crowley. Order of court directing that witness be held to bail.

May	19.	Drawing 3 recognizances of witnesses 3 f. ea. @ 15, 1.35	1.35
		Item 18, total	1.35

(Disallowed by Comptroller because he alleges one recognizance for all the witnesses would have been sufficient. See Report 103450.)

WESTERN DIVISION.

Item 19:

1887.

U. S. vs. Lucius Brownlee, crim. inf.:

June	13.	Ent'g order for jury	.15
"		Ent'g names of jury panel	.15

U. S. vs. Geo. S. Lynch, crim. inf.:

June	7.	Ent'g order for jury	.15
"		names of jury panel	.15

U. S. vs. Wm. H. Hall, crim. inf.:

June	13.	Ent'g order for jury	.15
"		Ent'g names of jury panel	.15

33

U. S. vs. A. F. Pennington, crim. inf.:

June	7.	Ent'g order for jury	.15
"		names of jury panel	.15

U. S. vs. Miles Ridgway, crim. inf.:

June	15.	Ent'g order for jury	.15
"	"	names for jury panel	.15

U. S. vs. Maurice Gray, crim. inf.:

June	15.	Ent'g order for jury	.15
"	"	names of jury panel	.15

U. S. vs. Wm. Lynch, crim. inf.:

June	15.	Ent'g order for jury	.15
"	"	names of jury panel	.15

U. S. vs. Roscoe, crim. inf.:

June	17.	Ent'g order for jury	.15
"	"	names of jury panel	.15

U. S. vs. John W. Burkly, indictment counterfeiting ..

June	28.	Ent'g order for jury	.15
		Ent'g 10 challenges by the defendant @ 15	1.50
		" names of the selected jury panel	.15

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

WESTERN DIVISION—continued.

U. S. vs. Henry Jones, robbing indictment:

June 30.	Ent'g order for jury	.15
	Ent'g 9 challenges by def't @ 15	1.35
	" 1 " " U. S	.15
	Ent'g names of the selected jury panel	.15

1887. WESTERN DIVISION.

U. S. vs. James Hammock:

Oct. 3.	Ent'g names of selected jury panel	.15

U. S. vs. J. H. Marks:

Oct. 6.	Ent'g names of selected jury panel	.15

U. S. vs. Abram Yancy:

Oct. 17.	Ent'g names of selected jury panel	.15

U. S. vs. Cudjo Whitehead:

34 Nov. 18.	Ent'g names of selected jury panel	.15

EASTERN DIVISION.

U. S. vs. Lewis Crosby:

Jan. 10.	Ent'g names of selected jury panel	.15
	" order for discharging of defendant after verdict of not guilty	.15

WESTERN DIVISION.

1888.

Mch. U. S. vs. Green Fowler:

Mch. 23.	Ent'g names of selected jury panel	.15

U. S. vs. W. H. Steele:

Mch. 23.	Ent'g names of selected jury panel	.15

U. S. vs. Doll Pitts:

Mch. 1.	Ent'g names of selected jury panel	.15

U. S. vs. John Lewis:

Mch. 2.	Ent'g names of selected jury panel	.15
	Item 19, total	7.50

(According to report 103985 of the Comptroller the disallowances were for the following alleged reasons: "All charges for entering order for jury, entering names of jurors, &c., are disallowed. The docket fee pays for such services upon the trial of a case." In reports No. 106688, 107495, 108425 the Comptroller abandons that position and takes up the following: "In cases where charges are made on same day of entering order for jury, 15c.; names of jurors, 15c.; disallowed one charge 15c. in each case, because one entry should contain an order for jury and names and would not exceed 1 folio.")

35 EASTERN DIVISION.

Item 20:

United States vs. Adolph Lipschutz, Abraham Buckardt. Scire facias on recognizance.

Jan. 26, 1888.	Making 2 copies of scire facias for services on def'ts, 6 f. ea., 12 f., @ 10	1.20
	Item 20, total	1.20

(Disallowed by the Comptroller for report 107495 as follows: "The charges for making copies of sci. fa. is disallowed. If the marshal desires copies in order to serve by copies he should make them.")

EASTERN DIVISION.

Item 21:

Sept. 7, 1883 to Apr. 19, 1888.	For making 1,316 copy subpœnas (subpœna tickets one for each witness in a case) for service by the marshal on witnesses for the United States, 1 f. ea., 1,316 f., @ 10	131.60

Exhibit A.—*The United States of America to H. H. King, &c.*—Continued.

WESTERN DIVISION.

Mch. 26, 1884, to May 16, 1888. For making 396 copy subpœnas (subpœna tickets, one for each witness in a case) for service by the marshal on witnesses for the United States, I. C. 88, 396 f., @ 10 ..... 39.60

Item 21, total 231.20

(Disallowed by Comptroller as follows: "All charges for making copies of subpœnas for marshal are disallowed. Marshal must make his own copies, fee for service covering this. See report 16150.)

36 EASTERN DIVISION.

Item 22:

1887. United States vs. James M. Cooper. Attachment, defaulting witness. Dismissed after testimony heard:

Jan'y 15, '87. Docket and indexes 3.00

United States vs. Donald M. McIntosh. Attachment, defaulting witness. Dismissed Apr. 1, '87.:

Docket and indexes 1.00

EASTERN DIVISION.

1888. United States vs. Horace Carter. Attachment, defaulting witness. Juror. Dismissed after testimony heard:

Jan. 5, '88. Docket and indexes 3.00

Making final record, 5 f., @ 15 ..... .75

United States vs. Wm. L. Exley. Attachment, defaulting juror. Dismissed after testimony heard:

Jan. 5, '88. Docket & indexes 3.00

Making final record, 5 f., @ 15 ..... .75

United States vs. H. M. Conner. Attachment, defaulting juror. Judgment imposing fine, Jan. 5, '88:

Docket & indexes 3.00

Making final record, 6 f., @ 15 ..... .90

WESTERN DIVISION.

1888. United States vs. Joseph Dannenburg. Attachment, defaulting juror. Dismissed Mch 2, '88:

Docket & indexes 1.00

Making final record, 5 f., @ 15 ..... .75

37 United States vs. Marshall Armstrong. Attachment, defaulting witness. Sentence Mch 23, '88:

Docket & indexes 1.00

Making final record, 14 f., @ 15 ..... 2.10

20.25

(Disallowed by Comptroller for reports 10150, 10705, 10848, as follows: All charges for docket fees in proceedings of attachment of jurors & witnesses are disallowed; such proceedings are not cases within the meaning of the fee bill, and "all charges for final record of proceedings upon attachment of defaulting jurors witnesses disallowed as the *final record was unnecessary*".)

EASTERN DIVISION.

Item 2.:

Making final record in the following criminal cases brought by information (the charges for recording proceedings had before the committing magistrate upon which the informations were found having been disallowed by the Department as unnecessary), as follows:

United States vs. Pompey Leven. Plea, guilty, Jan. 24, '88.

Affidavit, warrant & finding by court of probable cause of defendant's guilt, 8. Bond for appearance at court, 6. Justification of surety & waiver of homestead exemption, 2 — 16 @ 15 ..... 2.40

38 United States vs. Edward Glover. Plea, guilty, Jan. 24, '88.

Affidavit, warrant, & finding by court of probable cause of defendant's guilt, 7 f.; bond for appearance, 6 f.; justification of surety & waiver of homestead, 2 f.; commitment under sentence & marshal's ret., 6 f., 22 f., at 15c 3.30

Exhibit A.—*The United States of America to H. H. King, dr.*—Continued.

EASTERN DIVISION—continued.

United States vs. F. W. Wilcox. Plea guilty, 1, 9, '88:
Affidavit, warrant, & finding by com'r of probable cause of defendant's guilt, 8; commitment to jail and return, 5; bond for appearance at court, 6; justification of surety & waiver homestead exception, 2; 21 f., at 15 ..... 3.15

United States vs. Lewis Crosby. Verdict, not guilty, Jan. 10, 1888:
Affidavit, warrant, & finding by co'm'r of probable cause of deft's guilt; commitment to jail and return, 6 = 14 f., 15 ..... 2.10

United States vs. N. S. Lacy. Indictment:
Copies & marshal's return, 5; bond for appearance, 4 = 9 f., 15..... 1.35

WESTERN DIVIS.

1888. United States vs. Green Foote. Verdict, not guilty, Mch. 23, '88:
Affidavit, warrant & finding by com'r of probable cause of def't's guilt, 8; commitment to jail & return, 5; order to release on personal recog., justificat., & waiver homestead, 6; petition and order of subp. (subpœnas) at expense of U. S., 5; 21 f., @ 15 ..... 3.60

39 U. S. vs. W. H. Steele. Verdict, not guilty, Mch. 23, '88:
Affidavit, warrant, return, com'r's & finding, 8; commitment to jail & return, 5; bond for appearance, 6; justification & waiver homestead, 2 = 21 f., 15 ..... 3.15

U. S. vs. John W. Park. Nol. pros., Mch. 27, '88:
Affidavit, warrant, return, & com'rs finding, 8; commitment to jail, & return, 5; order to remove for northern dist., Ga., 2; temporary recognizances, 4; final recog. & justification, 5 = 24 f., @ 15 ..... 3.60

U. S. vs. Doll Pitts. Verdict, guilty, Mch 1, '88:
Affidavit, warrant, return, & com'r's finding, 8 f.; commitment to jail return, 5; bond for apearance, 6; commitment under sentence & return, 5; 24 f., @ 15 ..... 3.60

U. S. vs. Emanuel Lindsay. Plea, guilty, Feby. 29, '88:
Affidavit, warrant, return, & com'rs finding, 8; temporary bond, 6; justification & warrant homestead, 2; final re., justif. & waiver, 8; commitment on sentence & return, 5; 29 f., @ 15..... 4.35

Item 23, total 30.60

Disallowed by Comptroller, as follows: The charges for copying the following papers into the final record are disallowed because it is believed that it was not necessary to so copy said papers in order to make proper final record. Affidavit, warrant, & re-
40 turns & com'r's finding, commitments & returns, recognizance, justification of sureties, & waiver of homestead exemption on same, order to release prisoner on personal recognizance, petitions & orders for subpœnas on part of pauper defendants at expense of United States, order for removal of a prisoner from northern dist. of Ga., copies & returns of marshal. (See reports 10795, 10825.)

Total..... 8595.65

41 United States of America, southern district of Georgia, eastern division.

In the district court of the United States for the southern district of Georgia.

H. H. KING)
vs.
THE UNITED STATES.)

Assumpsit.

The President of the United States to the marshal of the southern district of Georgia, greeting:

The defendant, the United States of America, is hereby required personally or by attorney to be and appear at the next term of said court to

be held in the city of Savannah on the second Tuesday of November next, then and there to answer the plaintiff in an action of assumpsit, as in default thereof the said court will proceed as to justice shall appertain.

Witness the honorable Emory Speer, judge of the district court of the United States, at Savannah, in said district, this 25th day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.] H. H. KING,
Plaintiff.
MARION ERWIN,
Clerk U. S. Dist. Court.

42 *Acknowledgment of service.*

I hereby acknowledge service on me of a copy of the within petition in accordance with the provisions of sec. 6 of the act of Congress of March 3d, 1887, entitled "An act to provide for the bringing of suit against the Government of the United States." All further service upon me as district attorney waived.

Oct. 27th, 1888.

DU PONT GUERRY,
U. S. Att'y.

[Endorsement.]

In the district court of the United States for the eastern division, southern district of Georgia. November term, 1888. H. H. King vs. The United States of America. Assumpsit. Declaration. Filed the 25th day of October, 1888. Marion Erwin, clerk. Judgment for plaintiff April 23d, 1890.

43 SOUTHERN DISTRICT OF GEORGIA, ss:

H. H. KING)
vs.)
THE UNITED STATES OF AMERICA)

Assumpsit. In the district court of the United States, eastern division southern district of Georgia. Petition filed Oct. 25, 1888.

Affidavit of service.

H. H. King, being duly sworn, deposes and says that on the 27th day of Oct., 1888, he caused a copy of the petition in the above-entitled case, filed under the provisions of section 5 of the act of Congress of March 3d, 1887, entitled "An act to provide for the bringing of suits against the Government of the United States," to be served upon Du Pont Guerry, esq., district attorney of the United States in the southern district of Georgia; and that on the 27th day of October, 1888, affiant caused a copy of the said petition to be mailed by registered letter to the honorable A. H. Garland, Attorney-General of the United States, Washington, D. C.

H. H. KING.

Sworn and subscribed before me on this Dec. 1st, 1888.

[SEAL.] S. F. B. GILLESPIE,
Deputy Clerk U. S. C. Ct., Southern District of Ga.

44 [Endorsement.]

District court of the United States, eastern division of the southern district of Georgia. H. H. King vs. The United States of America. Assumpsit. Affidavit of service. Filed in clerk's office December 1, 1888. S. F. B. Gillespie, dep. clerk, U. S. dist. ct.

45 *Demurrer and plea of defendant.*

H. H. KING, CLERK CIRCUIT COURT OF U. S. southern dist. of Ga.,
vs.
THE UNITED STATES OF AMERICA.

Petition under act of March 3d, 1887. Nov. term, 1888, said court.

And now comes Du Pont Guerry, attorney for the United States for said district, and demurs to the petition in the above-entitled case, and moves to dismiss the same on the following grounds:

1st. Because no legal cause of action is set forth in said petition.

2nd. Because, according to the allegations in said petition, the petitioner not entitled to recover any of the items set forth in his alleged account.

DU PONT GUERRY,
U. S. Atty.

46 And the said attorney for plea and answer in said cause says that the said petitioner ought not to have and maintain his said action against the United States, because he says the said defendant is not indebted to the petitioner in manner and form as therein alleged, and was not at the time of the institution of said suit, and of this the defendant submits to the judgment of the court.

DU PONT GUERRY,
U. S. Atty.

[Endorsement.]

District court of the United States for the eastern division, southern district of Georgia. H. H. King vs. United States. Demurrer and plea of defendant. Filed in clerk's office December 20th, 1888. S. F. B. Gillespie, dep. clerk U. S. dist. ct. Du Pont Guerry, U. S. attorney.

47 *Agreement.*

In the district court of the United States, eastern division, southern district of Georgia.

H. H. KING
vs.
THE UNITED STATES.

Assumpsit. Filed Oct. 25th, 1888.

In order to disencumber the record of irrelevant matter, it is agreed that the disallowances by the Comptroller in the accounts of the claimant as

clerk of the circuit court are correctly stated under the items of the bill of particulars annexed to the claimant's petition, and that the original accounts rendered by the said clerk and the reports of disallowances by the Comptroller thereon need not be put in evidence.

Savannah, Ga., May 4th, 1889.

MARION ERWIN,
U. S. Attorney.
H. H. KING.

[Endorsement.]

District court of the United States, eastern division, southern district of Georgia. H. H. King vs. The United States. Agreement. Filed in clerk's office May 4th, 1889. H. H. King, clerk.

48 *Agreed state of facts.*

United States district court, eastern division, southern district of Georgia.

H. H. KING
vs.
THE UNITED STATES.

It is agreed in the above-stated case that the following state of facts shall be admitted as proved on the trial of said cause, to wit: That the claimant was appointed clerk of the circuit court of the United States for the southern district of Georgia on the 17th day of March, 1883, and has continued to hold that office until the present time; that he rendered at various times his accounts for fees claimed to be due by the Government, which accounts were duly presented and approved by the court, as required by Revised Statutes, section 846, and the act of Feb'y 22d, 1875 (18 Stat. L., 333); that the accounting officers of the Treasury Department disallowed quite a large number of the items charged; that the claimant made up an account for the aggregate amount of these disallowances,
49 running back to the date of his appointment, and included therein also similar items for services rendered which had not theretofore been included in the accounts rendered to the Department because of the said adverse rulings on the legality of the charges; that this account was presented and sworn to in open court, in the presence of the district attorney, on the 28th day of Oct., 1888, the claimant stating at the time that the account was for such items as had been disallowed in his accounts by the accounting officers of the Treasury, and that it was his purpose to bring suit for the same in this court; that upon objection made by the then district attorney the court held that it was not necessary or proper for the court to make any order in the premises at that time, but that the legality of the charges would be passed upon when the account was sued and should come up for trial regularly, and that the claimant was not, however, to be deprived of any advantage which might accrue to him by reason of his having presented the account with all its items for the approval of the court, as
50 prescribed by the act of Feb'y 22d, 1875 (18 Stat. L., 333), and that it is upon this account that the claimant sues, the same being annexed to claimant's petition as a bill of particulars; that the facts controlling the fol-

lowing items in the claimant's bill of particulars are exactly similar to the facts found by the court in the case of Erwin vs. The United States, decided Jan. 17th, 1889 (see 37 Fed. Rep., page 470), under similar items; that is to say, the items in the bill of particulars of the present claimant, controlled by facts similar to those so found, being as follows:

Item 1. Revising jury box, &c. (See Item 1 of opinion referred to.)	$75.00
Item 2. Making record of names, &c., of jurors. (See Item 2 of opinion referred to.)	3.00
Item 3. Per diem for attendance on each court when court held at two places in district at same time. (See Item 3 of opinion referred to.)	30.00
Item 8. Docket & indexes, &c., on hearing before judge an application for removal of defendant to other districts under section 1014 R. S. (See Item 8 of opinion referred to.)	3.00
Item 9. For filing each separate paper in cases sent up to clerk's office by commissioners as required by rule of court. (See Item 9 of opinion referred to.)	11.90
51 Item 10. Entering orders, &c., approving accounts of marshals, commissioners, &c. (See Item 10 of opinion referred to.)	6.10
Item 12. Entering proceedings in memoriam & order accepting for the walls of court room portrait of ex judge. (See Item 12 of opinion referred to.)	4.40
Item 13. Drawing reports & filing orders to pay witnesses and jurors. (See Item 13 of opinion referred to.)	135.40
Item 14. Issuing writs for temporary commitment of defendants arrested on bench warrants and committed to State jails pending trial. (See Item 14 of opinion referred to.)	4.00
Item 15. Attaching seals to certified copy of writs of commitment to be delivered to jailers with prisoners. (See Item 15 of opinion referred to.)	2.40
Item 20. Making copy of scire facias on recognizances for service on defts. (See Item 18 of decision referred to.)	1.20
Item 21. Making copy subpœnas for service on witnesses. (See Item 18 of decision referred to.)	231.20
Item 22. Making dockets & indexes in cases of attachment for contempt for defaulting witnesses and jurors. (See Item 7 of decision referred to.)	20.25
52 Item 25. Charges in cases brought by information for entering on final record the proceedings before commissioners on which such information is founded. (See Item 17 of decision referred to.)	30.60
	$558.45

Item 4. It is further agreed that the charges aggregated under the following items of the bill of particulars of said claimant shall be presented for the consideration and decision of the court on the issue raised by the First Comptroller in his disallowances, to wit: Account, July 1 to Nov. 2, 1885, western division, adjusted for Comp. Report 94252. From the aggregate amount otherwise allowed in said adjustment the Comptroller deducts $2.20, the cause of said deduction being stated as follows: "All charges for seals to copies of orders to pay witnesses disallowed." Whereas it is agreed that upon inspection of said account it does not appear that any charge was made therein "for seals to copies of orders to pay witnesses or jurors."

Item 5. Entering upon the minutes of the court the names of grand and traverse jurors drawn from the box, for writs of venire
53 facias at terms of court, at 15 cents per folio; entering order directing venire facias to issue, at 15c. per folio; entering return and filing venire; entering orders for summoning talesman, at 15c. per folio;

entering names of talesmen returned by marshal, at 15c. per folio; entering each day names of grand jurors in attendance while the grand jury are in attendance on the court, at 15c. per folio; aggregate of these charges, $3.85. Disallowed by the Comptroller because, as he alleges, all the above charges are unauthorized by the fee bill and because they are covered by the docket fee. (See reports 98375 & 100344.)

Item 6. Charges for filing orders to nolle prosequi, 20c. *cents*. Dissallowed by the Comptroller because he alleges it is unnecessary to file such orders. (See reports 105372.)

Item 7. Charges for issuing writs of subpœna and for filing and entering returns to same. When there was more than one writ of subpœna issued in the same case on the same day the Comptroller disallowed for more than one, the amount of such disallowances being $14.00. The alleged cause of the disallowance being that no more than one writ
54 of subpœna can be charged for in same case on same day. (See reports 100344 & 108425.) It is agreed that reference to the records show that where more *more* than one writ was issued in same case at same time the witnesses lived in localities not convenient for service in fewer writs than were issued.

Item 11. Charges in case of U. S. vs. Isaac Thomason. It is agreed that the facts were as follows as to this case: The defendant had been tried, convicted, and sentenced some two years before to imprisonment in Butts County jail. The jail was insecure and the defendant made his escape and was at large for about two years. A bench warrant was, by order of the court, issued for his arrest and return before the court. The defendant was arrested and returned before the court Oct. 6, 1886. Pending an investigation into the time he had already served under sentence he was ordered by the court to be committed to Bibb County jail, and a writ of commitment was accordingly issued by the clerk. On Oct. 7, 1886, he was again brought before the court and a new order made fixing the term of imprisonment he had still to undergo and changing the
55 place of confinement under the sentence from Butts Co. jail to Bibb Co. jail. The clerk's charges in and about these proceedings were $4.00. It is not denied that the services were performed or the charges were in accordance with the fee bill, but they were disallowed by the Comptroller as follows: "It seems that the only thing that was necessary was to have him arrested and put in prison, and the bench warrant should have commanded the marshal to commit the defendant to prison." (See reports 100344.)

Item 16. Entering order appointing deputy clerk. Entering order appointing U. S. attorney under sec. 793, R. S. Entering order appointing commissioner. Filing oaths of office. Charges aggregating 1.65. Disallowed by the Comptroller as not being payable by the United States. (See report 101090.)

Item 17. Entering names of grand jurors on minutes on return of indictments into court, 15c. per folio, 45 cents. Disallowed by the Comptroller as not necessary.

Item 18. Drawing 1 recognizance for each of three witnesses, recognized at the same time to appear in the same case, 3 of each, 9 folio, @
56 15, 1.35. Disallowed by the Comptroller because he alleges one recognizance for all the witnesses would have been sufficient. (See report 103450.)

Item 19. Charges for entries upon the minutes during the progress of trials in criminal causes as follows:

Entering order directing a jury to be called, 1 folio, 15 cents; entering the names of the jurors as empanelled and sworn, 1 folio, 15 cents; in felony cases entering name of each juror called and challenged, 15 cents for each entry; entering order discharging defendants after verdicts of not guilty; total, $7.50. According to report 103985 of the Comptroller these disallowances were for the following alleged reason: "All charges for entering order for jury, entering names of jurors, &c., are disallowed. The docket fee pays for such services upon the trial of a case." In report 106688, 107495, 108425 the Comptroller abandons that position apparently and takes up the following: "In cases where charges are made on same day for entering order for jury, 15c.; names of jurors, 15c.; disallowed, one charge, 15c., in each case, because one entry should contain an order for jury & names, and would not exceed 1 folio.

57 RECAPITULATION.

Items similar to those ruled upon in the case of Erwin vs. United States	$558.45
Item 4	2.20
5	3.85
6	.20
7	14.00
11	4.00
16	1.65
17	.45
18	1.35
19	7.50
	$593.65

Agreed to for use as evidence in the trial of said cause this Nov. 18th 1889.

H. H. KING,
Claimant.
MARION ERWIN,
U. S. Attorney.

58 In the district court of the United States, eastern division southern district of Georgia.

H. H. KING
vs.
THE UNITED STATES. } Claim, &c.

Findings of the court on facts and law.

The above-stated case was submitted to the court on an agreed state of facts, and the facts are found by the court in accordance with said agreement.

CONCLUSIONS OF LAW.

Upon said facts the claimant is entitled to recover the several amounts claimed in the items of his bill of particulars numbered as follows:

Item 1. Revising jury box, &c. (for reason, see item 1 in opinion of this court, a copy of which is hereto annexed, in case of Erwin vs. United States, 39 Fed. Rep., 470), $75.00.

Item 2. Making record of names, &c., of jurors (for reasons, see Erwin vs. The United States, item 2), 3.00.

Item 3. Per diem for attendance on each court when court held at two places in district at same time (for reasons, see Erwin vs. United States, item 3), 30.00.

59 Item 8. Dockets & indexes, &c., on hearing before judge on application for removal of defendant to other districts, under section 1014, R. S. (for reasons, see Erwin vs. United States, item 8), 3.00.

Item 9. For filing each separate paper in cases sent up to clerk's office by commissioners, as required by rule of court (for reasons, see Erwin vs. United States, item 9), 11.90.

Item 10. For entering orders, &c., approving accounts of marshals, commissioners, &c. (for reasons, see Erwin vs. United States, item 10), 6.10.

Item 12. Entering proceedings in memoriam and order accepting for the walls of court room portrait of ex-judge, 4.40.

(For reasons, see Erwin vs. United States, item 12.)

Item 13. Drawing reports, and filing orders to pay witnesses and jurors (for reasons, see Erwin vs. United States, item 13), 135.40.

Item 14. Issuing writs for temporary commitment of defendants arrested on bench warrants & committed to State jails pending trials (for reasons, see Erwin vs. United States, item 14), 4.00.

60 Item 15. Attaching seals to certified copy of writs of commitment to be delivered to jailors with prisoners (for reasons, see Erwin vs. United States, item 15), 2.40.

Item 20. Making copy of scire facias on recognizance for service on defendants (for reasons, see Erwin vs. United States, item 18), 1.20.

Item 21. Making copy of subpœnas for service on witnesses (for reasons, see Erwin vs. United States, item 18), 231.20.

Item 22. Making docket indexes in cases of attachment for contempt for defaulting witnesses and jurors (for reasons, see Erwin vs. United States, item 7), 20.25.

Item 23. Charges in cases brought by information for entering on final record the proceedings before commissioners on which such informations are founded (for reasons, see Erwin vs. United States, item 17), 30.60.

Item 4. Of claimant's bill of particulars. The agreed state of facts show that an improper deduction was made from the clerk's account
61 upon a misstatement of facts. He is, therefore, entitled to the amount deducted, 2.20.

Item 5. Under the 1st and 10th clauses of section 828, R. S., the docket fee is plainly intended to cover the clerk's services in issuing writs of venire. A charge for entering upon the minutes of the court the names of grand and traverse jurors drawn from the box, for writs of venire facias, and for entering orders directing how and when the writs of venire shall issue and be returnable, entering return of same, etc., at fifteen cents per folio, is authorized by the 8th clause of section 828, R. S. Such services, although necessarily performed antecedent to the issue of a writ of venire, is no more to be considered as a part of the "issuing" of the writ than is the entry of a judgment or decree to be considered as a part of the "issuing" of a writ of fieri facias on such judgment and decree. The charge for entering on record the names of grand jurors in attendance is authorized by the 8th clause of section 828, R. S. Amount of this item found for claimant, $3.85.

62 Item 7. Orders written on paper and signed by the judge, to be afterward entered on the minutes of the court, are part of the files of the court and should be marked filed by the clerk for identification and preservation. The charge for filing orders for nolle prosequi is authorized by the 3rd clause of Sec. 828, R. S., 20.

Item 7. The agreed state of facts show that there were no more writs of subpœna issued in a cause than convenience in serving witnesses in different localities would permit. There is no rule of law limiting the clerk's charges to only one subpœna in the same cause on the same day, which is the alleged reason for the disallowance by the accounting officers. The claimant is entitled to the amount of this item, $14.00.

Item 11. Where a proceeding is had in court against a defendant, in which the district attorney representing the United is movant and
63 orders by the court made, and writs issued by the clerk in accordance with the same, the clerk's right to his fees does not depend upon whether such proceedings be necessary or not. The contention of the accounting officers that the prisoner, Thomason, might have been dealt with differently and the proceeding in court thereby avoided, can not have any effect where the clerk performs services under the direction of the court and district atty. in such a case. The claimant is entitled to the amount of this item, $4.00.

Item 16. The charges for entering order appointing deputy clerk and for entering order under Sec. 793, R. S., appointing U. S. attorney, and for entering order appointing commissioner, and for filing oaths of office are payable by the United States. The general theory of our Government is that such offices are bestowed by the Government upon the appointee. The claimant is entitled to the amount of this item, $1.65.

64 Item 17. The entry of the names of grand jurors on the minutes of the court on return of indictments into court by the grand jury if not absolutely necessary is certainly proper and in accordance with the established practice. The names of the grand jurors under the common-law practice prevailing in the United States courts not being endorsed on the indictment, it is exceedingly important that the record should show that the same was returned by a competent grand jury. Claimant is entitled to the amount of this item, .45.

Item 18. Where three witnesses are recognized at the same time to appear in the same case, the proper practice is for the clerk to take a separate recognizance from each. (See U. S. vs. Golding, 1 Dillon, 43.) The claimant is entitled to the amount of this item, 1.35.

Item 19. The charges for entering upon the minutes during the progress of a trial on any day in a criminal cause the following proceedings,
65 order directing jury to be called, 1 fol., 15 cents; names of jurors empannelled and sworn, 1 fol., 15 cents; entering name of each juror called and challenged, 15 cents each entry, are not warranted. Such proceeding', which are noted by the clerk and entered at the same time, are not separate orders within the meaning of Section 854 R. S., and does not come within the ruling of this court in the case of Erwin vs. United States (39 Fed. Rep., 492).

Item 19. The amount of this item is found against the claimant, $7.50.

EMORY SPEER,
U. S. Judge.

(District court S. D. Georgia, E. D. January 17, 1889.)

1. Courts—Federal jurisdiction—Claims for fees.

The act of 22d February, 1875 (18 St. at Large, 333), which requires that the accounts of district attorneys, clerks, marshals, etc., shall be forwarded "when approved" "to the proper accounting officers of the Treasury," does not make presentation to such officers a condition precedent to a right of action, nor is rejection of a claim by the accounting officers of the Treasury such a determination of a "commission or department authorized to hear and determine," in the meaning of the act of March 3, 1887 (24 St. at Large, 505), as will bar an action in the proper courts.

2. Clerks—Fees.

While the general rule is otherwise, when a statute is silent as to compensation, if additional labor is imposed upon a clerk, not in the line of the duties ordinarily appertaining to such an office, and if contemporaneous construction of the statute by the attorney-general and analogous provisions of other statutes subsequently passed, indicate an intention to pay for such services, the officer is entitled to compensation.

3. Same—Service as jury commissioner.

A clerk of a circuit or district court of the United States is entitled to compensation for revising the jury box at the rate of five dollars per day for a period not exceeding three days for a term of the court. The clerk is entitled to charge 15 cents per folio for recording the names, residences, etc., of jurors, on a record which he is required to make by a rule of court.

4. Same—Attendance—Per diem—Attendance of deputy.

Where his deputy attends a session of the court, the clerk is entitled to a per diem compensation for such attendance, even though the clerk has received a per diem for his personal attendance the same day at a session of the court at another place.

5. Same—Statute—Repeal.

The proviso relative to compensation for attendance of court officers, in the act of August 4, 1886 (24 St. at Large, 253), was repealed by the proviso covering the same subject-matter in the act of March 3, 1887 (24 St. at Large, 541). And since the passage of the latter act it is not necessary that business be transacted in court to entitle the clerk to his per diem; it is sufficient if the court be opened for business by the judge.

6. Same—Service as commissioner.

The offices of clerk and commissioner are compatible. A person who holds two distinct compatible offices may receive the compensation of each. A clerk is given a per diem fee "for his attendance" at a session of the court; a commissioner is given a per diem fee "for hearing and deciding"—services clearly distinct.

7. Same—Attachment for contempt—Docket and record fees.

An attachment against a defaulting witness or juror for contempt of court is an independent suit, and a "cause" for which a docket fee is chargeable under the fee bill. The clerk is required to make a final record of the proceedings in such a case.

8. Same—Warrant for transportation—Docket fees.

The clerk is entitled to a docket fee for a hearing by the court on application for a warrant for the transportation of a defendant to another district under the provisions of section 1014 Rev. St.

9. Same—Filing papers.

The clerk is entitled to charge for filing each separate paper sent up by commissioners after hearing in criminal cases and for filing each separate account of deputy marshals, being the vouchers to accounts current of the marshal.

67 10. Same—Approving court officials' accounts.

The fees of the clerk for entering orders approving accounts of marshals, clerks, attorneys, commissioners, etc., as required by the act of February 22, 1875 (18 St. at Large, 333), and for certified copies of such orders for the department, are properly chargeable against the United States.

11. Same—Entering official proceedings.

Where, by order of the court, the clerk enters upon the minutes, as memorial services in respect to the late vice-president, a proceeding in court of an official character, the fee for entering is properly chargeable to the Government.

12. Same—Reporting account of witness and jury fees.

The statute requires that jurors and witnesses shall be paid upon the orders of the court. When the clerk states the accounts of jurors and witnesses, taking their affidavits as to travel and attendance, and presents the accounts stated in a report to the court for its approval, he is entitled to the fee prescribed by the statute "for making any report." The entered of record, and original orders signed by the judge should be placed upon file by the clerk, and he is entitled to a fee of 10 cents for filing each.

13. Same—Criminal procedure—Commitment.

In a State where the use of local jails for United States prisoners is permitted, whenever a prisoner is committed to jail a copy of the writ of commitment showing grounds thereof should be left with the jailer. In case of a proceeding before a judge or commissioner, in which it is necessary to commit the defendant to jail to await a hearing or pending examination, a writ to commit is necessary, setting forth the cause of detention, and why examination is postponed. After hearing and order committing for trial, a final writ of commitment is necessary, reciting the hearing, finding of probable cause, and that prisoner is committed in default of bail to await trial. Where a defendant is arrested on bench warrant, and brought before the court, and is committed in default of bail to await trial, the writ of commitment should state the cause of detention until a trial can be

had. After conviction a final writ of commitment is necessary, setting forth the fact of trial and conviction and the term of imprisonment prescribed in the sentence. The copy commitment delivered to the jailer should, where practicable, be certified, and bear the seal of the court.

14. Same—Final record.

A State law, passed since 1789, can not affect criminal procedure in the Federal courts. Unless there be an express statute to the contrary, the Federal courts are governed in criminal causes by the general common-law procedure. A final record was required to be made by the clerk at common law, and the general method of making the record prescribed by the common law should be followed now, subject to such changes as have been wrought by the character of our institutions, and the modifications made necessary by the enlarged bill of rights of the Federal Constitution.

15. Same.

A criminal information must be founded on an affidavit charging a crime, and a preliminary hearing finding probable cause, and fixing reasonable bail by the committing magistrate, otherwise the proceeding is not in accordance with due process of law, and is contrary to the fourth, fifth, and eighth amendments to the Constitution. The proceedings before the committing magistrate showing a compliance with these constitutional provisions, being a necessary part of the proceeding, should be entered upon the final record.

16. Same—Subpœna—Copies.

At common law the names of only four witnesses could be included in one writ of subpœna. The witness was served by leaving with him a copy of the subpœna, or a ticket which contained the substance of the writ. It was the duty of the party or his attorney to make the copy subpœnas or tickets, and furnish them, with the writ, to the officer for service. Section 829, Rev. St., requires that the clerk shall insert in each writ of subpœna the names of as many witnesses in a cause as convenience in serving will permit. Where the clerk makes the copy subpœnas or subpœna tickets, and furnishes them to the marshal for service, at the request or by the acquiescence of the district attorney, the clerk is entitled to charge the Government for making such copies.

68 17. Same—Counting record—"Folio."

In determining the number of folios in a final record each separate and distinct order, notice, or other paper is to be counted separately, according to the rule prescribed in section 854, Rev. St., and the aggregate of the folios so found is the number of folios in the record.

(Syllabus by the court.)

At law. Action to recover fees.
Marion Erwin, in propria persona.
Du Pont Guerry, U. S. att'y.

FINDING OF FACTS.

SPEER, J. This suit is brought under the act of Congress of March 3, 1887, which confers upon the district court of the United States concurrent jurisdiction with the Court of Claims of all demands against the Government not sounding in tort, in amounts not exceeding $1,000, and the same jurisdiction upon the circuit courts of demands exceeding $1,000 and not exceeding $10,000. The issues formed in these novel but salutary proceedings are triable by the court without the intervention of a jury. In the suit before the court the Government was represented by the United States attorney, and the plaintiff appeared in propria persona. The claimant was appointed clerk of the district court of the United States for the southern district of Georgia on the 17th day of March, 1883, and has continued to hold that office until the present time. He rendered, at various times, his accounts for fees claimed to be due by the Government, which accounts were duly presented and approved by the court, as required by the Revised Statutes, § 846, and the act of February 22, 1875 (18 St. at Large, 333). The accounting officers of the Treasury Department disallowed quite a large number of the items charged. The claimant made up an account for the aggregate amount of these disallowances running back to the date of his appointment, and included therein also similar items for services rendered which had not theretofore been included in the accounts rendered to the Department, because of the said adverse rulings on the legality of the charges. This account was presented and sworn to in open court in the presence of the district attorney, the claimant stating at the time that the account was for items disallowed in his accounts by the accounting officers of the Treasury, and that it was his purpose to bring suit for the same in this court. Upon objection made by the district attorney the court held that it was not necessary or proper for the court to make any order in the premises at that time; that the legality of the charges would be passed upon when the account was sued and should come up for trial regularly. The claimant was not, however, to be deprived of any advantage which might accrue to him by reason of his having presented the account with all its items for the approval of the court, as prescribed by the act of February 22, 1875 (18 St. at Large, 333). It is upon this account that the claimant sues. The petition contains also a count
69 for work and labor, in the usual indebitatus assumpsit. In the lengthy bill of particulars annexed to the petition all the items of disallowances of a similar character have been collected and ranged under appropriate heads, making 20 different items to be passed upon. It will be found convenient to set out the facts bearing upon each item as each is taken up for consideration.

CONCLUSIONS OF LAW.

"The act of 22d February, 1875 (18 St. at Large, 333), which requires that the accounts of district attorneys, marshals, clerks, etc., shall be forwarded, 'when approved,' 'to the proper accounting officers of the Treasury,' does not make presentation to the accounting officers a condition precedent to an action." (Ravesies v. U. S., 21 Ct. Cl., 243.) It follows, therefore, that, the accounting officers of the Treasury having ruled

against the legality of charges of a certain class for services performed on the presentation of a former account, it is unnecessary for the clerk to include in subsequent accounts charges for similar services as a prerequisite to his right to sue for the same. On the other hand, there are claims relative to which the Department may be invested with such power as will make a rejection by its officers final, even as against the courts. (Chorpenning v. U. S., 3 Ct. Cl., 140; Meade v. U. S., 9 Wall., 691.) But the rejection of a claim by the Comptroller or the accounting officers of the Treasury is not the determination of a "commission or Department authorized to hear and determine" which will prevent the revision of such a finding by the proper courts. Section 191, Rev. St.; Chorpenning v. U. S., supra; U. S. v. Saunders, 120 U. S., 126; 7 Sup. Ct. Rep., 467.)

CONSIDERATION OF THE CLAIM BY ITEMS.

Item 1. Charge for necessary time required (not exceeding three days for any one term of the court charged) and services rendered in procuring and selecting the names of competent jurors from the body of the district, and revising the jury list and box under the orders of the court, at $5 per day, $75.

FINDING OF FACTS.

The services were performed as charged. The nature of the services—the selection of competent jurors from the body of a district containing 79 counties and covering two-thirds of the State of Georgia—was such that it could not be conveniently performed during the sessions of the court, when the time of the clerk is occupied with court work, and the jury boxes, for obvious reasons, can not be revised. The selection of competent jurors requires much correspondence, the exercise of great care and sound judgment. It had been the practice in this district, whenever in the judgment of the court the jury box needed revision, to make an order before the close of one term of court, requiring the revision to be made during vacation for the next term of the court. The per diem charges here made are not for days when there were charges by the clerk for attendance in court. The several charges aggregated by this item were disallowed by the Comptroller as not warranted by law.

70 CONCLUSIONS OF LAW.

Jurors to serve in the courts of the United States were formerly selected in accordance with the laws of the several States. (Section 800, Rev. St.) By the act of June 30, 1879, a new and uniform method was established for all the Federal courts. Jurors possessing the proper qualifications were thereafter required to be selected by the clerk and a jury commissioner, to be appointed by the judge, and the names so selected to be placed in a box, from which the juries were to be drawn a soccasion required. (21 St. at Large, 43; 1 Supp. Rev. St., 497.) Here was a new, important, and arduous duty placed upon the clerk, not contemplated at the time of the enactment of the clerk's fee bill in 1853 (section 828, Rev. St.), and yet the act is silent as to compensation to the clerk or to the jury commissioner. If the silence of the act in this particular be indicative of an in-

tention to throw this additional labor upon the clerk without any compensation therefor, as Congress had an undoubted right to do, it would be indicative also of an intention not to compensate the jury commissioner, whose appointment is provided for also, and to make that office purely honorary. But the Attorney-General appears to have held otherwise. He allowed what he considered reasonable compensation to jury commissioners out of the fund appropriated for the miscellaneous expenses of the courts. (Annual Report of Attorney-General for 1883, p. 19.) For weight to be given such opinion, see U. S. v. Hill, 120 U. S., 180; 7 Sup. Ct. Rep., 510, and cases cited. Besides, the appropriation bill of March 3, 1885 (23 St. at Large, 511), had a provision for "compensation for jury commissioners, $5 per day, not exceeding three days for any one term of the court." This is a legislative interpretation of the statute coinciding with the contention of the claimant. A similar provision is contained in each subsequent appropriation. The duties of the clerk in revising the jury box are not those usually coming within the functions of the office of a clerk of court. In effect the act creates two new officers—the jury commissioners of the court—one of these commissioners to be appointed by the court and the clerk of the court ex officio to be the other. In point of fact the clerk is ex officio a jury commissioner, and it seems clear that he is entitled to compensation as such out of the appropriation for pay of jury commissioners at the rate of five dollars per day, as provided for by the several appropriation acts, or at least the intention to pay at that rate may be inferred from those acts, and whether the clerk is entitled to pay out of those appropriations or out of the regular appropriation for fees of clerks is immaterial. (See U. S. v. Brindle, 110 U. S., 688; 4 Sup. Ct. Rep., 180.)

Item 2. Charge for making record of names, residence, etc., of jurors on jury-list record, three dollars, and making copy of the names, etc., for the jury box, two dollars.

FINDING OF FACTS.

It is not denied that the services were rendered, but the disallowance by the Comptroller is stated in his report to be "because not authorized to a clerk. This is the work of the jury commissioner."

71 CONCLUSIONS OF LAW.

The statue does not make it the duty of the jury commissioner to make such a record, but the duty is imposed upon the clerk by rule 60 of this court—a rule prescribed by the late honorable W. B. Woods, when circuit judge. The importance of the record can not be denied, and the clerk is entitled to charge for making any record at 15 cents per folio, and this is the amount charged. It is conceded that if the clerk is entitled to pay for revising the jury box, that the charge of two dollars for making copy of names, etc., for the jury box is erroneous, as being properly within the services for which the per diem is provided.

Item 3. Charge for necessary attendance under section 584, Rev. St., by deputy, at Savannah, on the opening day of the May term, 1884, and on the opening day of the November term, 1887, $10.

FINDING OF FACTS.

These per diem charges were disallowed by the Comptroller because the clerk charged for and received a per diem fee for his personal attendance at a session of the court at Macon on the same days; the Comptroller holding that only one per diem can be charged by a clerk, even though the court is in session at two different places in the district at the same time and even though the clerk is compelled to be at one place himself, and have a deputy in attendance at the other. It is not denied that the services were rendered as stated.

CONCLUSIONS OF LAW.

The first question that arises is: How far can a clerk be represented in the performance of his duties by deputy, and whether he is entitled to receive the usual fees for work done, when the service is performed by deputy? The powers and duties of deputy clerks are not fixed by section 558, Rev. St., which provides for their appointment. But it is provided that their salaries must be paid by the clerks from the earnings of the clerk's office under the fee bill. (Sections 561, 839, Rev. St.) And the clerk is responsible for the acts of his deputy. (Section 796, Rev. St.) For these reasons the right of the clerk to receive the fees earned by his deputy stand on the same footing as that of the marshal to receive the fees earned by his deputy, and the relations between the two can not be satisfactorily illustrated by the relations between a district attorney and an assistant district attorney. The latter is paid a salary by the Government, and the district attorney is not responsible for his acts. (Townsend v. U. S., 22 Ct. Cl., 214.) "A deputy is said to be one who occupieth in right of another, and for whom regularly his superior shall answer." "A deputy has not any estate or interest in the office, but is as servant to the officer." "A deputy can not regularly have less power than his principal." (7 Bac. Abr., 316, L.) "Where the office of registrar to the bishop of Rochester was granted to J. S., who was an infant of twelve years of
72 age, this was held a good grant, the office being to be exercised by him or his deputy." (Id., 312, I.) As a matter of practice, it is as often the case as otherwise, that the duties of a clerk or marshal in the court room are attended to by deputy, while the principal officer is engaged in the performance of other duties appertaining to his office elsewhere. This is particularly true in districts in which there are several places of holding court. Hon. William Lawrence, late First Comptroller, in passing upon a similar question before the Department, said:

"A usage so long continued as to make it law, if there ever could have been any doubt about it, permits a deputy marshal to attend the sittings of courts, and gives the marshal a right to the per diem fee of five dollars for this service." (Double per Diem Case, 5 Lawr. Dec., 279.)

The next question to be considered is whether the clerk is entitled to two per diem fees on the same day—one for his personal attendance at a session of the district court for the western division of the district at Macon, and the other for the attendance of his deputy at a session of the district court for the eastern division of the district at Savannah. The act of Congress providing for the holding of courts in two places in the southern district of Georgia is entitled "An act to provide for circuit and

district courts of the United States at Macon, Georgia." The act provides that "said southern district shall be, and hereby is, divided into two divisions, to be known as the eastern and western divisions of the southern district of Georgia." (Act Jan. 29 1880, 21 St. at Large, 62). Careful consideration of the provisions of this act leads to the conclusion that separate, independent, and distinct courts were created in each division. In fact the "district court of the United States for the eastern division of the southern district of Georgia" is a tribunal as distinct from the district court of the United States for the western division of the southern district of Georgia as was the "Fifth circuit court of the United States for the northern district of Georgia" from the "fifth circuit court of the United States for the southern district of Georgia," before the passage of the act referred to. The terms of the courts in the two divisions were so fixed by the act that the sessions at Macon and Savannah frequently conflict. It often happens that while the judge and clerk are in attendance upon the district court in one division, the court in the other division must be opened and adjourned under the provisions of sections 583, 584, etc., of the Revised Statutes, and the clerk must have a deputy in attendance there. Section 828, Rev. St., contains the following provision in reference to the clerk's fee for attendance:

"For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going, and five cents for returning, and five dollars a day for his attendance on the court while actually in session."

"Court" is here used clearly in the sense of "term" or "session" of the court, corresponding to the second definition of the word given by Mr. Bouvier in his Law Dictionary, because it is the term or session of the court which is "required by law to be held" at a particular time and place. And "the court," referring to "any court," makes it the
73 fair intendment of the clause that the clerk shall be entitled to five dollars a day for his attendance on any term of any court required by law to be held at any particular place, while the court is actually in session. The fee is "for his attendance" at that particular place and on that particular court, and "five dollars a day" is the measure of his compensation for that particular service. (Goodrich v. U. S., 35 Fed. Rep., 193.) Therefore pay for his attendance on one court at a particular place can not be pay for his attendance by deputy on a different court in a different place. And this is in accordance with the substantial justice of the case. The per diem of the clerk for his attendance in the one division is, under the law, justly and fully earned by his personal attendance on that court; and since he must, under the law, pay the expenses of maintaining and keeping a deputy in attendance at the court in the other division, and be responsible for his acts, it is but just that he should receive the fee for such attendance, so that he may pay the deputy from his earnings, and have a margin of compensation for his own supervisory care and responsibility. The honorable William Lawrence, late First Comptroller, passed upon a similar question in case of a marshal's account pending before the Treasury Department and reached the same conclusion. (Double per Diem Case, 5 Lawr. Dec., 278.)

Item 4. Charge for necessary attendance at May term, 1887, at Savannah, two days, May 25th and 28th, on which the court was opened for business by the judge in person, $10.

FINDING OF FACTS.

The court was opened for business by the judge, but it is admitted that no business was transacted in court on those days other than the reading and approval of the minutes, the entry of the clerk of the names of the officers of court in attendance, and the making of the entries opening and adjourning court. The disallowance by the Comptroller was "because no business was actually transacted on those days."

CONCLUSIONS OF LAW.

This disallowance is probably based upon the provision in the appropriation bill of August 4, 1886, providing as follows:

"Nor shall any part of the money appropriated by this act be used in the payment of a per diem compensation to any clerk or marshal for attendance in court except for days when business is actually transacted in court and when they attend under sections 583, 584, 671, 672, and 2013 of the Revised Statutes." (24 St. at Large, 253.)

But the appropriation bill of March 3, 1887, contained a clause covering the same subject-matter and was not limited to that appropriation in its application. It provides that "hereafter" the clerk shall not charge a per diem fee "except for days when the court is open by the judge for business or business is actually transacted in court," and when the attendance is "under sections 583, 584, 671, 672, and 2013 of the Revised Statutes." (24 St. at Large, 541.) "Where two acts are not in all
74 respects repugnant, if the later covers the whole subject of the earlier and embraces new provisions which plainly show that it was intended as a substitute for the first, it will operate as a repeal." (King v. Cornell, 106 U. S., 396; 1 Sup. Ct. Rep., 312; Speer, Rem. Causes, 73.) Therefore, when the court was opened for business by the judge on May 25 and 28, 1887, and the clerk was in attendance, he is entitled to his per diem whether business was transacted or not.

But, independently of the above considerations, the clerk is entitled to his judgment here for these charges. Under the provisions of the fee bill (section 828, Rev. St.) the clerk was entitled to a per diem for his attendance on the court when actually in session even though "no suitors appeared or for other reason the court, in its discretion, adjourned to a future day." (Jones v. U. S., 21 Ct. Cl., 1; Bill v. U. S., Ct. Cl., No. 15570, 23 Ct. Cl., 142; Goodrich v. U. S., 35 Fed. Rep., 193.) The limitation in the act of August 4, 1886, was expressly confined to the money appropriated by that act, and did not therefore repeal the general statute giving the clerk the right to his per diem for his attendance for each day when the court is actually in session. "A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated or suspended by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly modify or repeal it." (U. S. v. Langston, 118 U. S., 389; 6 Sup. Ct. Rep., 1185.)

Item 5. Charge for necessary attendance in the district court at Macon at the October term, 1887—October 10th, 17th, November 9th, 19th, 22d, and 26th—six days, $30.

FINDING OF FACTS.

It is not denied that the service was performed as charged, but the disallowance by the Comptroller is "because the same days were charged and allowed him as commissioner of the circuit court."

CONCLUSIONS OF LAW.

It is not questioned that the office of clerk and United States commissioner are compatible offices. From the organization of the judicial machinery of the Government it was found convenient to confer upon the clerk of the court the powers of circuit court commissioner, and most of the clerks have had those powers conferred upon them. The appointments have been made and recognized as valid by many of the most eminent of our Federal judges, notably by the late Justice Woods in this circuit. It is provided that "no marshal or deputy-marshal of any of the courts of the United States shall hold or exercise the duties of commissioner of any of the said courts." (Section 628, Rev. St.) But, notwithstanding the well-known practice of appointing clerks as commissioners, there has never been any legislation prohibiting such appointments. The late Comptroller, William Lawrence, held that such offices were not incompatible, nor was that of collector of internal revenue and commissioner. (Wade's Case, 1, Lawr. Dec., Rec., 302, 27 Int. Rev., 16, Jan. 17, 1881.) The regulations of the Post-Office Department, in prohibiting certain employments to postmasters, make an exception in the case of appointment as commissioners. It is safe to say that clerks holding that position have performed its duties with as much skill, honesty, and fairness as any other class of men who have been appointed to the position. A person who holds two distinct compatible offices may lawfully receive the salary or compensation of each. (U. S. v. Saunders, 120 U. S., 127; 7 Sup. Ct. Rep., 467; U. S. v. Brindle, 110 U. S., 688; 4 Sup. Ct. Rep., 180; Converse v. U. S., 21 How., 463.) The idea of the accounting officers seems to be that the claimant having been paid a per diem for hearing and deciding as commissioner on a day certain, that even though he was not occupied in that service but a portion of the day, that his time was purchased by the Government for all purposes during that 24 hours. The same reasoning would have prevented Saunders from receiving two salaries for the same month, but the Supreme Court held that, as the offices were not incompatible and as he had performed the work of each office, he was entitled to both salaries. The statute gives the clerk five dollars per day "for his attendance" on the court while actually in session. The court day may not last but 10 minutes, and yet the per diem for that court day will be fully earned at the expiration of that 10 minutes. (Bill v. U. S., supra; Goodrich v. U. S., 35 Fed. Rep., 193.) On the other hand, the statute gives the commissioner five dollars per day "for hearing and deciding" on criminal charges "for the time necessarily employed." (As to what constitutes a hearing and deciding, see Harper v. U. S., 21 Ct. Cl., 56.) The respective services, therefore, are entirely distinct, and for the performance of each the statute prescribes a fee.

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Item 6. This item has been reconsidered and allowed by the comptroller since the institution of the suit, and has consequently been stricken out by amendment.

Item 7. Charge for making dockets and indexes in cases of attachment for contempt, for defaulting witnesses and jurors, $7; and for making final record in such cases, $3.75.

FINDING OF FACTS.

This item was disallowed by the comptroller "because these proceedings are not cases within the meaning of the fee-bill," and "complete records not necessary as to such proceedings."

CONCLUSIONS OF LAW.

It is unnecessary to go into the distinctions drawn by the courts as to when proceedings to punish for contempt are to be regarded as on the civil or criminal side of the court. These particular proceedings were instituted by the Government. The question raised is whether such proceedings are "causes" within the meaning of the fee-bill, for which a docket fee can be taxed. Mr. Bouvier defines a "cause" to be "any question, civil or criminal, contested before a court of justice." "Case" and "cause" are synonyms. (Blyew v. U. S., 13 Wall., 581.) In proceedings for contempts for failure to obey the orders or writs of a court, the parties have the right to be heard, and to purge themselves of
76 the contempt if they can. Such a proceeding is commenced by a regular process of the court, and there is a question to be contested and decided. "When a court commits a party for contempt, their adjudication is a conviction, and their commitment in consequence is execution." (Ex parte Kearney, 7 Wheat., 38.) In that case, where a person imprisoned for contempt by the circuit court applied to the Supreme Court of the United States for a writ of habeas corpus, it was denied because "this court has no appellate jurisdiction in criminal cases." There is in such cases process, judgment, and execution under which the defendant may be imprisoned and his property sold and title pass. The necessity, therefore, for a record is absolute. A proceeding for contempt is a distinct and independent suit. (Hayes v. Fischer, 102 U. S., 121.) Comptroller Lawrence held that district attorneys were entitled to docket fees in such cases. (Contempt Case, 5 Lawr. Dec., 255.)

Item 8. Charge for making dockets and indexes, in case of a hearing before the judge on application for a warrant for the transportation of a defendant from the southern district of Georgia to the district of South Carolina, under the provisions of section 1014, Rev. St., three dollars.

FINDING OF FACTS.

This item was disallowed by the comptroller "because there was no case in the district court within the meaning of the fee-bill."

CONCLUSIONS OF LAW.

The use of a docket containing an abstract of the proceedings in a case for convenient reference, as well during the trial of the case as afterwards, is well recognized. While the proceedings under consideration are before the district judge, there are questions to be decided which are

frequently stubbornly litigated. Even cases tried by a commissioner are properly entered upon a docket. The docket fee is not prescribed by the fee-bill simply for cases tried in court; the language is broad enough to apply as well to cases tried before the judge; and where the orderly conduct of the public business requires such a docket to be kept, the clerk is the proper person to keep it, and is entitled to a charge therefor.

Item 9. Charge for filing each separate paper sent up by commissioners after hearing in criminal cases, $105.50.

FINDING OF FACTS.

This item was disallowed by the comptroller because he alleges that it is the duty of the clerk or the commissioner to fasten all the papers sent up by the commissioner together, and file them as one.

CONCLUSIONS OF LAW.

The rule of this court adopted on January 1, 1877, provides that after examination "all the papers in the case, including the affidavit and warrant to apprehend and the recognizance, shall be forwarded at once by the commissioner to the clerk's office." Rules of Court, p. 36. There is no law or rule of court requiring the papers to be fastened to-
77 gether and, considering the use to which they are to be put in the further progress of the case, or in the examination of accounts of commissioners, such a practice would be exceedingly inconvenient. They must be separated necessarily; as, for instance, when the affidavit is used as a basis for an information, or, or the bond is forfeited, etc. Each paper should be filed for its permanent identification. The charge for filing each separate paper is authorized by the fee-bill. (Section 828, Rev. St.; Reed v. U. S. Ct. Cl. No. 14,980, decided 1888; Goodrich v. U. S., 35 Fed. Rep., 193.)

Item 10. Charge for entering orders approving accounts of commissioners, marshals, clerks, attorneys, etc., and for certified copies of orders, as provided by 18 St. at Large, 333, $79.80.

FINDING OF FACTS.

It is not denied that the services were rendered, and the charges in accordance with the fee bill, but the disallowances were made by the Comptroller for the following reason: "All charges connected with the verification and approval of accounts of attorneys, marshals, clerks, and commissioners are disallowed, as not properly chargeable to the United States," and because the charge "is payable by the officer individually."

CONCLUSIONS OF LAW.

By the terms of the act it is expressly provided that the accounts of clerks, marshals, and district attorneys shall be "rendered" to the court, and the officer shall prove the account in open court to the satisfaction of the court, by his own oath or that of other persons having knowledge of the fact. If the officer has done that, he has performed all that is required of him by the statute, and his account is fully rendered. There is some-

thing, however, for the court to do. It must cause to be entered of record an order approving or disapproving the account, as may be, "according to law, and just." The clerk is then required to file the duplicate accounts, and forward the originals to the proper accounting officers of the Treasury. The officers having performed the services, the Government is justly indebted to them to the full amount of the fees prescribed for the same without any deduction, and when they have presented their account in the manner prescribed by law they are not properly chargeable with the after-expenses incident to methods adopted by the Government for its own convenience or protection. The injustice of adopting such a rule is particularly apparent in the case of the marshal, most of whose accounts rendered are not for fees, but for disbursements of funds intrusted to him for pay of witnesses, jurors, support of prisoners, and miscellaneous expenses of the courts; and in case of accounts rendered for actual expenses in the transportation of prisoners to the penitentiary, under section 5546, Rev. St., for which he gets no compensation whatever, and of which a separate account is required by the Attorney-General for each transportation, the performance of the duty would be an expense to the officer, which is clearly not contemplated by the statute. In the case of commissioners, the force of this reasoning is still more apparent, because the act provides that all they have to do is to forward their accounts, duly verified by oath, to the district attorney, and he must see to the other proceedings. The clerk being entitled to the charges, they are therefore properly payable by the United States. (Reed v. U. S., supra.) Similar charges were considered by Comptroller Lawrence as properly chargeable to the Government. (Commissioners' Oath-Fee Case, 5 Lawr. Dec., 350.)

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Item 11. Charge for filing each separate account of deputy marshals, being the vouchers to accounts current of the marshal, $8.90.

FINDING OF FACTS.

This item was disallowed by the Comptroller as "unnecessary and unauthorized."

CONCLUSIONS OF LAW.

The purpose of filing the duplicate accounts of officers of the court in the clerk's office is for ready reference. It is not practicable to fasten these vouchers together, and would make reference to them inconvenient. Besides, each separate voucher should be identified. The charge is authorized by the fee bill. (Goodrich v. U. S., 35 Fed. Rep., 193.)

Item 12. Charge for entering upon the minutes, by order of the court, proceedings in the court in memoriam on the death of the honorable Thomas A. Hendricks, late Vice-President of the United States, and for similar proceedings on the death of Justice W. B. Woods, of the Supreme Court of the United States, $4.50.

FINDING OF FACTS.

These charges were disallowed by the Comptroller "as not payable by the United States."

CONCLUSIONS OF LAW.

It has been the custom of this Government, and of all civilized governments, from time immemorial, to pay suitable respect to the memory of its distinguished citizens, who die while in the public service. The halls of the legislative and judicial departments are draped in mourning, public buildings are clothed in black, and ships of war carry their flags at half-mast. Such acts are regarded as the acts of the Government, performed through its public servants, and such trivial expenses as the purchase of bunting, etc., for such occasions have been universally recognized as an expense properly chargeable to the Government. Proceedings in court in memory of a distinguished associate justice or of a Vice-President stand upon the same footing, and the Government could as well refuse to pay the printer who sets up the type for some eulogistic speech delivered in Congress on similar occasions as to refuse to pay the clerk for recording a memorial resolution entered upon its permanent records by the orders of the court.

Item 13. Charge for making reports of the amount of fees due by the United States to jurors and witnesses for travel and attendance,
79 for the approval of the court, as required by sections 846, 855, Rev. St., and for filing the orders to pay the same, $93.30.

FINDING OF FACTS.

The charges aggregated by this item cover a period of three years and may be consolidated thus: "Drawing 223 reports, 2 f. each, at 15c., $66.90. Filing 264 orders to pay, at 10c., $26.40." The reason assigned by the Comptroller for the disallowance in his report, No. 92163, is as follows: "All charges for filing orders to pay jurors and witnesses disallowed. After such orders are entered on record, they should be given to the marshal to accompany his account as authority to pay." This position was apparently abandoned in subsequent reports and a new position taken, as stated in the letter of the First Comptroller to the clerk of August 3, 1886, which is in evidence, as follows:

"In accounts hereafter rendered you will not be allowed for drawing reports of attendance of witnesses and filing orders to pay witnesses, in addition to entering order on minutes. It seems sufficient that the orders should be entered on the minutes and a copy of each order furnished to the marshal."

The practice in this district in regard to the payment of the fees due by the United States to witnesses and jurors is as follows: When a case has been disposed of and the witnesses are discharged by the district attorney from further attendance, they repair to the clerk's office. The clerk then ascertains the exact amount due them for attendance and mileage, by examination of their subpœnas, questioning them as to the place from which they have traveled, and comparing their statements with a table of distances kept in his office for that purpose, and the witness is sworn on a jurat drawn on his subpœna ticket to the correctness of his claim. If any doubtful question arises it is referred to the presiding judge for his decision. The days attended, mileage, and amounts due the respective wit-

nesses are then entered on a report, which is signed by the clerk and submitted to the court for its approval. This report is in the following form:

"To the honorable the presiding judge of the district court of the United States for the eastern division of the southern district of Georgia:

"I have to report that the following-named witnesses are entitled to the amount set opposite their names, for their per diems and mileage for attendance upon the said court at and during the ——— term, 188–, to the truth of which account they have been duly sworn.

"———— ————, Clerk."

Then follows the title of the case, and a list of the names of the witnesses, with the number of days attended and miles traveled, and the amounts due them, respectively. This report is then submitted to the court, and, if adjudged correct, the following order is indorsed upon it:

"It is ordered that the marshal for this district pay to the above-named witnesses the amount set opposite their names for their per diem and mileage for attendance upon the court, as above stated.

"In open court, this ——— day of ———, 188–.

———— ————, U. S. Judge."

80 A similar report and order is made where jurors are to be paid, except, of course, they do not attend in any particular case, while the fees of witnesses are properly taxed in the case in which they attend. The only question involved is whether these reports by the clerk are necessary for the convenient dispatch of the public business as incident to the method of payment of witnesses and jurors provided by the statutes.

CONCLUSIONS OF LAW.

"In cases where the United States are parties the marshal shall, on the order of the court, to be entered on its minutes, pay to the jurors and witnesses all fees to which they appear by such order to be entitled, which sum shall be allowed him at the Treasury in his accounts." (Section 855, Rev. St.) "No accounts of fees or costs paid to any witness or juror upon the order of any judge or commissioner shall be so re-examined as to charge any marshal for an erroneous taxation of such fees or costs." (Section 846, Rev. St.) The clerical work involved in the making up and stating the accounts of witnesses and jurors is very properly done by the clerk; the institution of the office is for the purpose of relieving the judge from clerical services. The judges could not perform these duties without serious interference with the dispatch of judicial business. That such accounts should be carefully made up and stated by some responsible ministerial officer of the court is plain. The clerk cannot, under the statute, enter the order on the minutes until the order is made; and no order fixing the exact amount to be paid, as is contemplated by the statute, can be made until the statement of the items of the account is presented to the court in proper form. The convenient dispatch of the business of the court makes it necessary that it should be presented to the court in such shape as to prevent the consumption of the time of the court unnecessarily in the consideration of details, and that is best accomplished by the

report of the clerk to the court in proper form. It is true that in general the court may direct a clerk to enter upon the minutes an order not previously reduced to writing, but it is the universal practice where an order contains a number of details to write it out upon paper, and, after the signature of the judge is appended, it is handed to the clerk for entry on the minutes, the original being filed away in the clerk's office as a part of the files of the court. If the order is to be made by the court, the court must be first put in possession of its details. The reports being necessary, the clerk is entitled to 10 cents per folio for making the same. (Section 828, Rev. St.; Commissioners' Oath-Fee Case, 5 Lawr. Dec., 350, note; Singleton v. U. S., 22 Ct. Cl., 118.) The fact that he is entitled to an additional fee for entering the order on the minutes, and for making a copy for the accounting officers of the Treasury if they require it in the adjustment of the marshal's accounts, can not affect the question. In regard to filing the orders to pay to which the signature of the judge is attached, such papers belong to the files of the court, and should be marked "Filed" by the clerk for identification. The charge of 10 cents for filing any paper is authorized by the fee bill.

81 Item 14. Charge for issuing writs of commitments of defendants to jail to await trial, and for making certified copies for jailer, and entering marshal's returns, eight dollars.

FINDING OF FACTS.

In two of the cases in question the defendants had been committed to Richmond County jail after a preliminary examination before a commissioner there. At the ensuing term of the court the defendants were brought to Savannah for trial, and as the trial could not be had on the day on which they were brought to court, the court directed that the defendants be committed to the Chatham County jail to await trial, that jail being in the vicinage of the court; and the clerk issued the commitments accordingly. In another one of the cases the defendant was charged with murder on the high seas, and, pending a hearing postponed to another day, the district judge directed the clerk to issue a writ of commitment to Chatham County jail. In the other cases the defendants were brought into court on bench warrants, and, in default of bail, were, by the direction of the court, committed to jail to await trial. Writs of commitment were issued by the clerk accordingly. These charges were disallowed by the Comptroller "because the defendants were in the custody of the marshal under process."

CONCLUSIONS OF LAW.

The point at issue turns upon the proper practice in such cases. "In a State where the use of jails, penitentiaries, and other houses is not allowed for the imprisonment of persons arrested or committed under the authority of the United States, any marshal in such State, under the direction of the judge of the district, may hire or otherwise procure, within the limits of such State, a convenient place to serve as a temporary jail." (Section 5537, Rev. St.) And in such cases no special process of commitment is necessary, the prisoners being already in the custody of the marshal, and their detention being still continued in his custody. (Turner v.

U. S., 19 Ct. Cl., 629, No. 12774; In re Osterhaus, 6th Circuit, Mich., 6; Amer. Law T., 519.) But in a State, as in Georgia (see section 359, Code 1882), where the use of jails is allowed for United States prisoners the statutes authorize their imprisonment there. (Ex parte Geary, 2 Biss., 489.) "And while so confined therein shall be exclusively under the control of the officers having charge of the same, under the laws of such State or Territory." (Section 5539, Rev. St.) The State jails are not under the control of the marshal, nor is the custody of the jailer the custody of the marshal in such cases (Randolph v. Donaldson, 9 Cranch, 76); and the statutes provide that "whenever a prisoner is committed to a sheriff or jailer by virtue of a writ, warrant, or mittimus, a copy thereof shall be delivered to such sheriff or jailer as his authority to hold the prisoner, and the original writ, warrant, or mittimus shall be returned to the proper court or officer, with the officer's return thereon." (Section 1028, Rev. St.) In regard to commitments to await trial, it has been held that it is proper for a commissioner to issue a writ of commitment on sending a prisoner
82 to jail pending an examination—what is commonly called a "temporary commitment"—provided the examination cannot be had at once; but examinations should be held within 24 hours thereafter, unless special cause be shown. (U. S. v. Worms, 4 Blatchf., 332.) And it has been held that every writ of commitment must show sufficient cause on its face to justify the jailer in holding the prisoner. The copy of the commitment is the authority of the jailer to hold. (Ex parte Burford, 3 Cranch, 448; ex parte Bennett, 2 Cranch, C. C., 612; U. S. v. Brown, 4 Cranch, C. C., 333; ex parte Williams, id., 343; U. S. v. Harden, 10 Fed. Rep., 803.) It follows, therefore, that in case of an examination before a judge or commissioner, in which it is necessary to commit the defendant to jail to await a hearing, or pending the examination, that a writ of commitment is necessary, setting forth the cause of his detention, and why the examination is postponed. After the hearing and finding of probable cause of defendant's guilt, a new writ of commitment is necessary, because, in order to justify the detention of the prisoner for months, as it sometimes happens, before he has been convicted of a crime, it should appear that he has had an examination before the committing magistrate, that probable cause of his guilt has been found, and that he is committed in default of bail. The same rule applies to proceedings before the court. If a prisoner is brought before the court in the custody of the marshal, on bench warrant or otherwise, before trial, and it becomes necessary to commit him to the custody of any particular jailer for the first time, a writ of commitment is necessary, setting forth the cause of the detention. Again, after trial and conviction, when the court sentences a defendant to imprisonment for a term in any particular jail, a writ of commitment, commonly called the "final commitment," is necessary, for the reason that the time and purpose of the imprisonment are entirely different. Nor is there anything in section 1030 of the Revised Statutes opposed to this procedure. That section must be construed with section 1028, because both sections are parts of the same act. Section 1030 provides that—

"No writ is necessary to bring into court any prisoner or person in custody, or for remanding him from the court into custody; but the same shall be done on the order of the court or district attorney, for which no fees shall be charged by the clerk or marshal."

The meaning of this section is obvious. Where a prisoner has once been committed to jail to await trial or pending a trial, he may be brought out to court or carried back to jail a dozen or more times, and for day after day during the progress of the trial; and for this purpose no writ is necessary, because, after the jailer in the first instance has taken custody of the prisoner, the copy of the writ on which the commitment was made remains with him as his authority to hold. The statute is expressly limited to prisoners or persons already in custody, and the further use of the expression "remanding" shows clearly that it applies only to cases where the person has already been committed properly under the provisions of section 1628, because "to remand" implies a previous custody.

83 The district attorney is given no power under the statutes to imprison, and his powers here are clearly limited to the bringing in and remanding persons already imprisoned by competent authority. "Where special reasons exist why a warrant of commitment should be issued to the marshal and the jailer for the purpose of having the prisoner actually committed to jail, as was the case in the trial of Aaron Burr, cited by the claimant (1 Burr's Tr., 351, 358, 359), and as is frequently the case where the marshal has no sufficient conveniences for the safe-keeping of the prisoner out-side of a jail, and a commitment to prison is actually made, it would seem not to be a simple case of remanding, and for the service of such a warrant by actual commitment the marshal might charge his fee." (Turner v. U. S., supra.)

Item 15. Charge for attaching seals to certified copies of commitments furnished for service on jailor when defendants are committed to jail, $1.60.

FINDING OF FACTS.

These charges were disallowed by the Comptroller "because the marshal and the jailer must take official cognizance of the signature of the clerk."

CONCLUSIONS OF LAW.

Even if that be true, the copy of the commitment is the authority of the jailer to hold the prisoner. Other courts and other persons have the right to inquire into the cause of the detention of a citizen, and there is certainly no rule by which they are required to take official cognizance of the signature of the clerk of this court unless the seal of the court is attached. But judicial notice is taken of the seals of a superior court. (Bouv. Law Dict., "Seal.") It is true that under the comity of courts such a copy not under seal might very properly be taken as sufficient notice of the character of the custody as to require that the proper officer of the Government be notified of any proceeding looking to the release of a prisoner; but that comity has not always been respected by the State courts exercising habeas corpus jurisdiction, even in this district. The proper practice is to attach the seal of the court to such copies.

Item 16. This item has been stricken by amendment, because allowed by the Comptroller since the bringing of the suit.

Item 17. Charge, in criminal cases brought by information, for entering on the final record the following proceedings: Affidavit, warrant of arrest,

marshal's return, and finding of commissioner of probable cause of defendant's guilt, upon which the information is founded; commitment to jail in default of bond; recognizance in cases where given, and justification of surety, and waiver of homestead exemption where it is waived; petition and order for subpœnas on part of defendant at expense of the United States; commitment under sentence, and marshal's return—$60.75.

FINDING OF FACTS.

These charges were disallowed by the Comptroller "because it was not necessary to copy the same to make proper final record."

84 CONCLUSIONS OF LAW.

The clerk must record all the orders, decrees, judgments, and proceedings of the court. (Section 791, Rev. St.) "In its general acceptation, 'proceeding' means the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments, and of executing." "Ordinary proceedings intend the regular and usual mode of carrying on a suit by due course at common law." (Bouv. Law. Dict.) There are no statutes prescribing what records the clerk shall keep or how they shall be kept in criminal cases. "Congress has never enacted a code of criminal procedure, and the States have no power to prescribe either modes of proceeding or rules of evidence in prosecutions for Federal offenses. In a general way the Federal courts must be governed in these respects by the common law." (U. S. v. Maxwell, 3 Dill., 278.) "In the administration of criminal law, unless there be an express statute to the contrary, we are governed by the general common-law procedure. In the administration of criminal law and in criminal jurisprudence we go to the common law for the purpose of ascertaining the modes of practice, the modes of procedure, the rights of defendants, the rights of the Government, the duty of the court, and the duty of the jury, and we administer it according to that." (U. S. v. Nye, 4 Fed. Rep., 890.) "No law of a State made since 1789 can affect the mode of proceeding or the rules of evidence in criminal cases." (U. S. v. Reid, 12 How., 361.) Passing now to the common-law authorities: "A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony. * * * The very creation of a new jurisdiction, with the power of fine or imprisonment, makes it instantly a court of record. A court not of record is the court of a private man whom the law will not intrust with any discretionary power over the fortune or liberty of his fellow subjects." (3 Bl. Comm., 24.) Proceedings for contempt are therefore especially the subject of record. "Records are not complete until delivered into court on parchment; therefore a minute book, from which an entry of the proceedings at sessions is made and from which book the roll containing the record of such proceedings is subsequently made up, is not a record." (Arenb., Crim. Pl., 127.) "The record of judicial proceedings is always in the first instance taken down by the clerk of the court in the way of short entries made upon his dockets or of the indorsements upon papers filed, and the like. It is not until after the term of the court closes that

the extended record, or record proper, is made; and for the making up of this record resort is had to the docket entries, to the accompanying files of papers, and to the several indorsements upon them; these serve as memoranda to the clerk. In England the extended entry, or record proper, is written upon parchment; in the United States books made of stout paper are used." (1 Bish. Crim. Proc., § 905.) Mr. Bishop, in his work on criminal procedure, treats very fully the subject of making up the final record in criminal causes brought by indictment. (See 1 Bish.
85 Crim. Proc., § 913.) The principles laid down there may be applied to proceedings by information, bearing in mind that the validity of the two proceedings rest upon very different foundations; and it must be borne in mind that the Constitution of the United States has placed certain restrictions upon the criminal procedure at common law, which makes it necessary that a record which is liable to be reviewed in a court above should speak as to a compliance with these provisions. Thus "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." (Amend. 4, Const.) "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury * * * nor be deprived of life, liberty, or property without due process of law." (Amend. 5, Const.) "Excessive bail shall not be required." (Amend. 8, Const.) A criminal information must be founded on an affidavit charging a crime and a preliminary hearing fixing bail and finding of probable cause by the committing magistrate; otherwise the proceeding is not due process of law and is contrary to the fourth and fifth and eighth amendments. (U. S. v. Shepard, 1 Abb. U. S., 431. U. S. v. Toreaud, 20 Fed. Rep., 621. Hurtado v. California, 110 U. S., 516; 4 Sup. Ct. Rep., 111.) It is very essential, therefore, that the commitment proceedings should be regular, and that the record should show it. It is only necessary to add that the definition of a recognizance is "an obligation of record." The justification is a part of the recognizance. The statute provides that the writs of commitment shall be returned to the proper court or officer, with officer's return thereon." (Section 1028, Rev. St.) A fee is provided for entering the return, and it is clearly contemplated as a part of the record. "It is the mode of executing judgment," as described under the definition of "proceedings." The petition and order for subpœnas on part of the defendant at the expense of the United States is part of the proceedings of the case, and in some cases may form an essential part of the record to be reviewed.

Item 18. Charge for making copy subpœnas (subpœna tickets, one for each witness in a case) for service by the marshal on witness for the United States, one folio each, at 10 cents, $199.40.

FINDING OF FACTS.

The charges aggregated by this item extend over a period of five years. They were disallowed by the Comptroller "because these copies should be made by the marshal, and the charge therefor is * * * covered by his fee for service." It is in evidence that, because of this position taken

by the Comptroller, the clerk refused to continue furnishing the marshal subpœna tickets, as requested by the then district attorney, and the marshal refused to make them, and that the district attorney brought this disagreement between the officers informally before the court; his honor, the late Judge McCoy, presiding. Upon consideration, the court
86 directed the clerk to continue to make the tickets according to the practice which had always prevailed in the court. This was in 1883. The clerk has continued to make the tickets from that time, and his making them has been acquiesced in by the district attorneys, and even now the district attorney concedes that if it is not the marshal's duty to make them, they are very properly made by the clerk.

CONCLUSIONS OF LAW.

Unless the sheriff's fee for service at common law made it his duty to make the copies, and included that in the fee for service, it is clear that it is not included in the marshal's fee for service. The practice at common law was as follows: "In ordinary cases the common subpœna is sufficient process to compel the attendance of your witnesses. You may include the names of four witnesses in one writ. Take it, together with a præcipe, to the signer of the writs. Pay 1s. 8d. signing, 7d. sealing. Then make out a copy of the subpœna for each witness, and serve it upon him personally, at the same time showing him the writ." (1 Archb. Crim. Pr., 170; 2 Russ. Crimes, 945; Archb. Crim. Pl., 157.) "The witness must be personally served by leaving with him a copy of the subpœna, or a ticket which contains the substance of the writ." (Rose. Crim. Ev., 106; 3 Chit. Gen. Pr., 830.) For form of subpœna ticket, see 1 Sel. Pr., 451. In like manner it is provided by the United States statutes fixing marshal's fees that "when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be entitled to compensation for travel on only two of such writs; and to save unnecessary expense it shall be the duty of the clerk to insert the names of as many witnesses in a cause in such subpœna as convenience in serving the same will permit." (Section 829, Rev. St.) It was not necessary, except in particular jurisdiction, for process in nonbailable actions at common law to be served by a sheriff's officer. If by the attorney or his clerk it is sufficient. (1 Sel. Pr., 88.) But in bailable actions the capias must be executed by the sheriff, undersheriff, or by some bailiff or officer deputized by the warrant of the sheriff for that purpose. (Id. 120, 122.) Mr. Chitty states "the practical proceedings upon issuing process in general" as follows: In case of an ordinary summons, after the sealing of the principal writ, "the attorney then fills up at least as many blank writs of summons, printed on paper, as there are defendants, and which must be exact copies of the principal sealed writ, and one very exact copy of which must be delivered to each defendant, immediately after the service of the writ of summons, or arrest on a capias." In service of capias in bailable action, after the sealing of the principal writ, "the attorney, having made perfect copies, then proceeds to the proper office of the under-sheriff." (3 Chit. Gen. Pr., 226; 1 Archb. Crim. Pr., 329, 332.) It is very clear, therefore, that at common law it was the duty of the plaintiff or his attorney to furnish the officer with the

necessary copies of writs for service, and that, too, whether it be a writ which might be served by a private person, or whether it be one
87 which could be served only by an officer. It remains to be shown that the clerk has the right to charge for making the copies when made by him, at the request of the Government, either express or implied. It can not be doubted but that the party or his attorney has still the right to make these copies, and that, when so made, the clerk is entitled to no fee for such copies. But it is well known that these officers keep a supply of carefully prepared blanks in their offices for use, which they prepare at their own expense, and this appears to have been the case from a very early time. (1 Sel. Pr., 69, 115.) And because of that fact, and their recognized skill in preparing such papers, it is almost the universal practice in civil cases for the parties or their attorneys to have the clerk make these copy writs or subpœna tickets. It relieves the attorney from the necessity of performing clerical details which would otherwise frequently take his attention away from the more important duties devolving upon him in the conduct of his case. The district attorney would have the same right to call upon the clerk to perform these services in a case that the attorney of a private party would have, and the clerk's fee-bill provides a fee of 10 cents per folio for making copies (section 828, Rev. St.), and such copies may be taxed in the casts of the case (see section 983, Rev. St.).

It is not questioned that the clerk is entitled to charge for copies of injunctions, commitments, and other processes for service when made by him, but it is claimed that the following provision in the marshal's fee-bill changes the rule in regard to subpœnas: "For serving a writ of subpœna on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness." (Section 829, Rev. St.) This limitation is not in the clerk's fee-bill, and applies only to the marshal. If it be contended that the statute reads by intendment, "and no further compensation shall be allowed to either the clerk or marshal for any copy, summons, or notice for a witness," the answer is that under that construction it could not by any means be held that that statute made it the duty of either the one officer or the other to make the copies, and since, as the law then stood, it was not the business of either, the duty would rest where it always did, upon the party or his attorney, and the contention that it was included in the marshal's fee for service could not stand. But this interpolation is not justified. The marshal is the executive officer of the court, and the affirmative right given by the clause is to charge for service of a writ of subpœna; and the limitation that "no further compensation shall be allowed for any copy, summons, or notice for a witness" means clearly that no additional charge shall be made for service of any notice, or the service of any summons, and ejusdem generis, for the service of any copy for a witness. It was intended to prevent the marshal from making any additional charge for serving the subpœna ticket, or for serving any notice or summons upon the witness when he is already under subpœna; it being provided in another clause that the marshal's per diem for attendance on court shall cover also the "bringing in and committing prisoners and witnesses during the term." But even if
an interpolation be made so as to make the clause read, "and no
88 further compensation shall be allowed for making any copy summons or notice for a witness," the effect would be simply a reasser-

tion of the right of the parties to make such copies for themselves without fee to any one, as the statute would not even then make it the duty of the marshal to make such copies. The language is purely negative in its character, a prohibition as to a charge; and, as we have seen, the making of such copies did not otherwise fall within the prescribed duties of the marshal. The purpose of the limitation would be construed to be similar to that of rule No. 28 of the circuit court for this district, which is as follows: "The waiver of process and of service by the defendant shall not deprive the clerk or marshal of their respective costs for process and service, but no fees for copies and mileage shall be taxed." This rule, adopted by the late Justice Woods, recognizes the right of the marshal to charge for a service not actually performed by him, if another person without his consent has put the machinery of his court in motion by an action which he is entitled to perform, and for which a fee is provided; but it is also an assertion that the making of copies of process by the clerk is not such a service, and that the parties have the right to make copies of process for themselves.

But whether it was the marshal's duty to make these copies or not, the validity of the copies did not depend upon who made them. The marshal refused to make them, and on motion, and by the acquiescence of the district attorney, they were made by the clerk. If it became the clerk's duty for any reason to perform that service for the Government, he was entitled to the fee provided for such work. (See U. S. v. MacDaniel, 7 Pet., 14, cited and applied in Hartson v. U. S., 21 Ct. Cl., 455, 456.)

Item 19. Charge for making final record in certain criminal cases, being for the number of folios recharged against the clerk by the Comptroller on the report of an examiner of the Department of Justice as in excess of the actual count, $34.50.

FINDING OF FACTS.

The difference in the count arises thus: The examiner claims that the number of folios in any case is ascertained by taking the aggregate number of words in the entire record and dividing by 100. The clerk claims that each separate and distinct order or other paper is counted separately, and the number of folios is ascertained by the rule prescribed by section 854, Rev. St., and the aggregate of the folios so found is the number of folios in the record.

CONCLUSIONS OF LAW.

"The term 'folio,' in this chapter, shall mean one hundred words counting each figure as a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words." (Section 854, Rev. St.) Here is express authority in the statute for the counting of each separate and distinct order or other separate proceeding in the record separately. If an order contained less than 50 words, how could it be counted a folio, unless it be counted separately? If an order contained 425 words, how
89 can it be counted as only 4 folios, unless it be counted separately? And the counting of each separate and distinct order, notice, or

statute separately implies that the other independent proceedings should be counted separately also. This would follow from the sequence of the proceedings on the record. And this has been expressly decided. (Cavender v. Cavender, 10 Fed. Rep., 828.) To illustrate: Suppose a record was made up of the following proceedings:

Indictment	1,280 words	13 folios.
Order for capias	25 "	1 "
Capias	183 "	5 "
Order fixing bail	30 "	1 "
Recognizance	142 "	4 "
Plea	18 "	1 "
Order for jury	15 "	1 "
Jury sworn	36 "	1 "
Verdict	10 "	1 "
Sentence	110 "	1 "
	2,449	29

In such a case there would be 29 folios in the record, not 24. And this appears to be the general rule for measuring work done by printers, clerks, and stenographers. The reason of the rule is found in the fact that the chirographist can copy one uniform and continuous piece of manuscript with much greater facility, and in less time, than he can copy any number of separate and distinct papers aggregating the same number of words, but which he has to handle, select, arrange, and appropriately head, as he concludes one and passes to another.

Item 20. Charge for making final record in certain criminal cases, recharged against the clerk by the Comptroller on the report of an examiner of the Department of Justice, $42.30.

FINDING OF FACTS.

The recharge was because the records were not completed at the time of the rendition of the account. It is in proof that the records were completed very shortly afterwards, and evidence of that fact submitted to the Comptroller, but no action was taken thereon by him.

CONCLUSIONS OF LAW.

The final record is not ordinarily made up, or at least not completed until until after judgment or decree. (Archb. Crim. Pl., 127; 1 Bish. Crim. Proc., § 905.) The cost of the final record is part of the costs of the case, and it therefore frequently becomes necessary, by reason of the fact that the court sentences a defendant to pay costs, that the costs of the case, including the cost of the record yet to be made, should be taxed as soon as judgment is rendered. The taxation of the costs of the record in such cases stand upon the same principle of necessity as the taxation and allowance of the fees of a witness for his mileage home before he has actually returned. For similar reasons it is usual to tax the cost of the final record in civil cases at the time of the rendition of the judgment, the
90 plaintiff paying costs, being entitled to have the amount paid included in his fi. fa. against the defendant. Under the laws of Georgia the costs of a case are payable to the officers on the rendition of the judgment. (Code, §§ 3684, 3685.) It frequently happens that the costs must be collected at that time, or the opportunity will be lost. Under the Federal statutes it is provided that "the fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed

to be paid out of the Treasury, shall be recovered in like manner as the fees of the officers of the States, respectively, for like services are recovered." (Section 857, Rev. St.) Whether this section provides a different rule for costs collected from the Government it is not necessary to consider. The proof is that the records were completed before the bringing of this suit, and therefore the clerk is certainly entitled to his judgment for the service now. (Ravesies v. U. S., 21 Ct. Cl., 243.)

FINAL CONCLUSIONS.

The lengthy bill of particulars of the plaintiff which we have just reviewed has entailed upon the court an unusual amount of investigation into the details of the technical duties performed by the clerks and the commissioners of the United States courts, and not infrequently analogies have been drawn from the laws and decisions relating to the kindred duties of the marshal. While the labor has been very great, the court will be gratified if, by the conclusions reached, it has aided to make plain the procedure which should be followed by the clerks of our courts of record in the performance of the many and important duties which devolve upon them. These require, for their faithful and efficient performance, much technical knowledge and legal training. These officials are most inadequately compensated at best; and besides, the emolument provided by law, small as it is, is often frittered away by careless and irresponsible dicta, which nevertheless close effectually the avenues upon which they might lawfully proceed for the collection of the wages of their labor. It is wise and beneficial that the circuit and district courts have been given jurisdiction in such cases. It is true in every instance of disputed account in every item of the bill of particulars that the plaintiff is fully and incontrovertibly sustained by the undisputed evidence; always by the obvious construction of the statute, and generally by an ample array of precedents from the decisions of the courts or of the comptrollers, and frequently from both. It is impossible to doubt the merit of his demands, and the court finds that the facts hereinbefore set forth are true, and that the plaintiff have judgment against the United States of America for the sum of $780.50 and costs accrued since the time when the United States put in issue his right to recover.

91 [Endorsement.]

In United States district court, eastern division, southern district of Georgia. February term, 1890. H. H. King vs. The United States. Findings of the court on facts and the law. Filed April 23d, 1890. H. H. King, clerk.

92 In the district court of the United States for the eastern division southern district of Georgia.

H. H. KING)
vs.
THE UNITED STATES OF AMERICA.)

Petition under act of March 3, 1887, 24 Stat. to 505. Assumpsit.

Judgment.

The above-stated cause came on to be heard on the 23d day of April, 1890, the petitioner appearing by his attorneys, Dunwalt, Adams &

Adams, and the defendant by Marion Erwin, esq., United States attorney, and was tried before the court upon the pleadings and proofs without the intervention of a jury. Whereupon it is considered, ordered, and adjudged by the court that the said plaintiff do have and recover against the said defendant, the United States of America, the principal sum of five hundred and eighty-six dollars and fifteen cents ($586.15), and all costs accrued and to accrue from date the Government put in issue the petitioners right to recover.

In open court, April 23, 1890.

EMORY SPEER,
Judge.

[Endorsement.]

Circuit court of U. S., eastern division southern district of Ga., April term, 1890. H. H. King vs. The United States of America. Assumpsit. Judgment for plaintiff filed April 23d, 1890. S. F. B. Gillespie, deputy clerk.

93 In the district court of the United States, eastern division, southern dist. of Georgia.

H. H. KING)
vs.
THE UNITED STATES.)

Petition, &c. Action to recover fees for services as clerk of U. S. circuit court. Judgment for petitioner, April 23, 1890.

Appeal.

The United States by Marion Erwin, U. S. attorney, makes application to the district court of the United States for said division and district, for the allowance of an appeal hereby made to the Supreme Court of the United States in the above-stated case. And notice is hereby given H. H. King, esq, that application has been made to the honorable Emory Speer, U. S. district judge for said district, for citation and for such orders and proceedings as may be necessary to perfect said appeal.

July 19th, 1890.

MARION EMORY,
Attorney for the United States.

[Endorsement.]

In U. S. district court, eastern division, so. district of Georgia. H. H. King vs. United States. Appeal. Filed in clerk's office, July 19, 1890. H. H. King, clerk.

94 H. H. KING, CLAIMANT,)
vs.
THE UNITED STATES.)

To the honorable the Supreme Court of the United States:

The appeal of the United States of America, the above-named defendant and appellant, respectfully showeth:

That upon the 25th day of October, 1888, the above-named claimant filed his petition under the act of Congress of March 3d, 1877 (24 Stat.

Large, 505), in the district court of the United States for the eastern division of the southern district of Georgia against the above-named defendant and appellant, which petition was a suit to recover from the United States the sum of $595.65 for compensation to said claimant for services alleged to have been performed by him while and as clerk of the circuit court of the United States for said district; that appellant filed the usual pleas of nonassumpsit and denial of indebtedness, and that afterwards, to wit, at the February term, 1890, of said district court the said
95 cause came on to be heard upon the pleadings and upon an agreed state of facts, and was tried by the court without a jury, and on the 23d day of April, 1890, at said term a final judgment was made and pronounced in said cause wherein it was in substance adjudged that said claimant have and recover from the United States the sum of five hundred and eighty-six dollars and fifteen cents ($586.15), with costs from the time the defendant put in issue the petitioner's right to recover.

Appellant assigns, as error, the respective conclusions of law made by said district court that, under items 1, 2, 3, 8, 9, 10, 12, 13, 14, 15, 20, 21, 23, 4, 5, 6, 7, 11, 16, 17, and 18, respectively, of claimant's bill of particulars, on the facts found by the court under said respective items, the claimant was entitled to recover judgment on each of said items.

Wherefore the appellant appeals from the whole of said judgment of said district court of the United States and respectfully prays that the judgment of the said district court, the pleadings, the findings of the court, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will
96 proceed to hear said cause anew, and that the said judgment of the said district court, and every part thereof, may be reversed, and a judgment made dismissing said petition with costs of such other decree as to the said Supreme Court shall seem meet and proper.

MARION ERWIN,
U. S. Attorney for Appellant.

The appeal of the United States of America in the above-stated cause is allowed and certified.

July 26th, 1890.

EMORY SPEER,
U. S. Judge.

[Endorsement.]

H. H. King vs. The United States. Appeal to Supreme Court of the United States. Filed Sept. 25th, 1890. H. H. King, clerk.

97 *Citation.*

By the honorable Emory Speer, judge of the district court of the United States for the southern district of Georgia.

To H. H. King, esq.:

Whereas the United States of America has lately appealed to the Supreme Court of the United States from a judgment lately rendered in the district court of the United States for the eastern division of the south-

ern district of Georgia made in favor of you, the said H. H. King, you are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the 2nd Monday of October next to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Macon, Ga., in said district, this 26th day of July, A. D. eighteen hundred and ninety.

EMORY SPEER,
U. S. Judge.

98 [Endorsement.]

In the district court of the United States, eastern division, southern district of Georgia, H. H. King versus The United States. Citation. Filed September 25th, 1890.

H. H. KING,
Clerk.

Acknowledgement of service.

Service of the within citation acknowledged; further service waived. Sept. 25th, 1890.

H. H. KING.

99 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, ss:

I, H. H. King, clerk of the district court of the United States for said division and district, do hereby certify that the writing and printed matter annexed to this certificate is a true and correct transcript of the record and proceedings in the cause of H. H. King vs. The United States lately pending in said district court and appealed by the defendant to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court at Savannah, in my district, this first day of October, A. D. 1890.

[SEAL.] H. H. KING,
Clerk U. S. District Court, Southern Dist. of Georgia.

(Indorsed on cover:) No. 628. The United States, appellant, vs. H. H. King. Filed December 17, 1890. S. Georgia D. C. U. S.

147 U.S. 676

Office Supreme Court U. S.
FILED.
JAN 7 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
H. H. KING. } No. 628.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
v.
H. H. KING. } No. 628.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR APPELLANT.

March 17, 1883, the appellee was duly appointed and qualified as clerk of the district court of the United States for the southern district of Georgia, and continued to hold that office up to the time of filing his petition in the court below on October 25, 1888, and thereafter.

The suit was brought to recover from the United States certain fees included in accounts duly rendered to the accounting officers of the Treasury Department from time to time, under the provisions of the act of February 22, 1875 (18 Stat. L., 333), and by said officers from time to time, as said accounts were adjusted at said Department, disallowed as unauthorized by law.

The dates of the several disallowances are not set forth in the record, hence it is impossible to separate the items disallowed prior to the passage of the act of March 3, 1887, under which the suit was instituted, from those disallowed after that date.

Exhibit A, with the petition (R. 2, *et seq.*), sets forth the dates of the services for which the fees are charged and the items claimed.

Treasury Department circular No. 86, dated July 26, 1881, requires accounts of clerks and other officers of the courts to be rendered at the end of each quarter of the calendar year. (Register of the Department of Justice [1884], p. 299; Rev. Stat., 237, 248, 250, 266, 269, 277, par. 1.)

It is, therefore, to be presumed that the disallowances were made within a short time after the rendition of the accounts for the quarter years in which the items accrued.

It is not alleged in the petition, nor is it stated in the findings of fact, that the sum demanded in the suit or any part thereof, would not, if added to the sum paid the appellee on the adjustments of his accounts at the Treasury Department, increase the emoluments of his office beyond the maximum amount prescribed by law therefor.

ASSIGNMENT OF ERRORS.

1. The court below erred in its conclusion of law upon the facts found that appellee should be allowed the fees and charges set forth in the findings of fact, to wit, items Nos. 1, 3, 5, 8, 10, and 11, 13, 14, 18, 17, and 19.

2. The court below erred in ordering and adjudging that the plaintiff there should have and recover against the United States of America the sum of $586.15, and all costs accrued or to accrue from the date the Government put in issue the petitioner's right to recover.

ARGUMENT.

We discuss the items above excepted to in the order of the findings. (R., 32, *et seq.*) But before entering upon the discussion, we beg leave to refer to a question of jurisdiction in respect of such items as were disallowed by the accounting officers of the Treasury Department prior to March 3, 1887. We contend that these items were barred from the jurisdiction created by act of that date and conferred upon courts to render judgments on claims against the United States. As this question will be passed upon by this court in the case of *United States* v. *Harmon*, No. 649, submitted at the present term under Rule 20, it will be unnecessary to discuss the question in this brief.

Item 1. This is a per diem charge of $5 per day for three days' services as clerk of court in connection with a jury commissioner, in selecting names of competent jurors to serve in the United States courts, under the provisions of the act of June 30, 1879. (21 Stat. L., 43.) The act is silent as to compensation for this service; but, as shown in the conclusion of law upon this item, subsequent enactment provided compensation at $5 a day, "not exceeding three days for any one term of the court" for "jury commissioners." It appears that the selections of the jurors were made during vacation pursuant to an order of court made at the term preceding.

The service of the clerk and the commissioner appears to be very laborious, and if the small compensation allowed to jury commissioners can by fair construction be extended to the clerk he should certainly be allowed it. But we hardly think that this can be done. The statute does not create a new office for the clerk; it does not make him a jury commissioner *ex officio*. The commissioners are to be appointed by the court, and the clerk performs his part of the new duty simply as clerk and in no other capacity. If he were to act in any other capacity the selection of juries would be invalid. This is one of the very common instances of imposing additional duties upon a public officer without making any provision for corresponding or any increase of compensation whatever for the onerous services required to be performed. A similar question is presented in the case of *United States* v. *Jones*, No. 312, which will be submitted to this court at the present term under Rule 20. It is discussed in the brief for the appellants in that case, and therefore we will not trespass upon the time of the court by reviewing it here. The question made in that case is that no "fees" shall be paid in the matter of approving accounts of officers of courts under the act of February 22, 1875.

Item 3. This item is for the attendance of the appellee by his deputy for two days at sessions of the United States district court held at Savannah. The charge was disallowed by the First Comptroller because appellee was paid for his attendance as clerk at a session of the district court held on the same days at Macon in the same judicial dis-

trict. The able discussion of the law by the court below on this finding would establish, if it were possible to do so, the legality of this item. But we submit it is impossible to do so unless it could be held that the prohibition of section 831 of Revised Statutes is in the nature of an exception which is to be strictly applied only to cases where the attendance on the same day is at a *circuit* court and a *district* court. But such a construction does not seem sensible, as it would lead to the incongruity of refusing two per diems for attendance on the same day by the clerk personally in the circuit court and by his deputy in the district court, when these courts are held at different places in his district, and of allowing the two per diems when the like attendance was at sessions of the district court held on the same day at different places in the same district.

Instead of resorting to a strained construction in a case like this, which would lead to absurd conditions, we think the proper judicial course would be to say *casus omissus*. We presume that Congress did not contemplate the possibility of two sessions of a district court on the same day at at different places in the same judicial district. We think that no legislation has yet established two district courts in any judicial district for the State of Georgia. In whatever division of the district the court may hold a session it is still the same "district court." It is not very apparent how this district court could have been in actual session at Savannah and Macon on the same day; but as the findings so say, the fact seems to be established, and, of course, it is not an impossibility.

Item 5. This item is a charge of per diem for the clerk's attendance in the district court, disallowed by the First

Comptroller because the clerk received per diem as a commissioner of the circuit court for the same days. Precisely the same question is presented in the case of *United States* v. *McCandless*, No. 900, now pending in this court, and the case has been submitted under Rule 20 at the present term. It is therefore unnecessary to discuss the exception in this brief.

Item 8. This charge is for making dockets and indexes, etc., of a hearing before a judge on an application for a warrant for the transportation of a defendant (prisoner) from the southern district of Georgia to the district of South Carolina. It is not shown that this proceeding was a "cause" within the meaning of the clerk's fee bill, hence the item can not be allowed. (*United States* v. *Van Duzee*, 140 U. S., 173.)

There is also another objection to this item:

The services charged for in this item were performed on February 7, 1888. (R., 4, item 8.) The deficiency appropriation act of August 4, 1886 (24 Stat. L., 247), provides that "commissioners, and justices of the peace acting as commissioners, may be paid the same compensation as is allowed to clerks for like services, but they shall not be entitled to any docket fees." It was held, in *United States* v. *Ewing* (140 U. S., 147), that this is permanent legislation, and intended to be an amendment of section 847 of the Revised Statutes. This prohibition is in effect a legislative declaration that it is unnecessary to keep dockets of proceedings before a United States commissioner or other committing magistrate, and that if such dockets are kept no fee shall accrue for that service. The

services charged for in this item were not proceedings in a "cause." They were not even the ordinary proceedings before the judge sitting as a committing magistrate. The sub-items (R., 4) show the services.

First. Issuing commitment to Bibb County jail, pending hearing before the judge for warrant of removal	$1.00
Second. Making copy for jailer, 4 folios, etc	.75
Third. Entering and filing return	.25
Fourth. Docket and indexes	1.00
	3.00

Each sub-item is a legitimate charge, except the fourth. It does not appear that there was a hearing before the judge for the granting of a warrant of removal; and why should there be a hearing for that purpose? The prisoner was already committed, and section 1014 of the Revised Statutes says:

* * * * *

> And where any offender or witness is committed in any district other than where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

But it is not material whether a hearing was or was not contemplated before issuing the warrant for removal—because it would be merely another proceeding before a committing magistrate. And Congress has declared that no docket fee shall be paid in such case.

It would be unpardonable to discuss a trifling fee of $1 before this court, if it were not for the fact that each

question settled in this class of cases will lead to harmony between the accounting officers of the Treasury Department and the officers of the courts in the matter of rendering and adjusting fee accounts.

Items 10 *and* 11. These are charges for services rendered in the matter of approving accounts of officers of the court under the act of February 22, 1875. As the questions involved are presented in the case of *United States* v. *Jones*, No. 312, on appeal in this court, which will be submitted at the present term under Rule 20, their discussion here is unnecessary.

Item 13. This charge is for making reports to the judge of the number of miles traveled by jurors and witnesses, and the number of days of attendance at court and the fees due therefor, and for filing the orders of payment made by the judge. For this service the First Comptroller disallowed the charges and allowed only the fee for entering the orders on the minutes. From the form of the proceeding (R., 42) it would seem that the report of the clerk is made a part of the order of the court, and that the practice is to include the names of all the witnesses who attend in a cause in one order. As these orders are entered on the minutes, the entry becomes the best evidence when the minutes are approved. Therefore there can be no necessity for filing the original orders. The proper inference is that the latter should be delivered to the marshal as his vouchers of authority to pay the witnesses and jurors. Hence the fees for filing should be disallowed, $26.40, if not the whole item. In the case of *United States* v. *Taylor*, No. 795, pending on appeal in this court, which will be submitted at the present term under Rule 20, excep-

tion is taken to a similar item on the grounds that the fee for "making dockets and indexes, etc.," (Rev. Stat., 828), comprehends the services charged in this item; and also other grounds.

Item 14. The exception to this item is merely that there is a clerical error. The amount as charged in the findings is "eight dollars" (R., 43). It appears in the "Agreed state of facts" as $4 (R., 23), and also as $4 in "Exhibit A" of the petition (R., 15).

Item 18. The exception here is merely formal in order to have the charge specially reviewed and determined. Leave is therefore respectfully asked to submit the question of the legality of this item.

Items 17 *and* 19. These are charges for certain entries on the final record in criminal cases. As to item 17, the entries seem to be wholly of the proceedings before the commissioner as a committing magistrate. Section 794 of the Revised Statutes is cited in the conclusion of law on this item in support of the item; also the procedure at common law. As to the statute, it seems to contemplate only a record of "all the orders, decrees, judgments, and proceedings" of the courts of the United States. The commissioner of the circuit court is not a court. We think the clerk of a circuit or district court is under no obligation to make a record of the proceedings had before a commissioner, and we know of no statute authorizing him to make a record of them. The Revised Statutes, section 1014, requires commissioner to transmit copies of his process and proceedings to the clerk's office, and it has been held in *United States* v. *Van Duzee* (140 U. S., 176) that the court has discretion to require the clerk to enter

"the orders of the commissioner binding the party to appear before the grand jury, and that the transcript of the commissioner's proceedings is no part of the case in the circuit or district court."

As to item 19, it appears that the parties in the court below did not make any objection as to the power of the Comptroller to recharge in one adjustment of an account for an item credited in a previously settled account, and the court below passed merely on the legality of the item. If this court should consider that the question of the right of the clerk to the fee charged is still open, then as to this item, and also item 17, we respectfully suggest that a similar item has been presented in the pending case of *United States* v. *Taylor* (*supra*).

III.

As to the second assignment of error, the judgment of the court below is erroneous for the foregoing reasons, and also the further reason that it does not appear that the amount of the judgment rendered in this suit, or of any item included therein, would not, if paid to appellant, increase the emoluments of his office beyond the maximum sum allowed therefor by law, exclusive of his properly allowable expenses of office.

Respectfully submitted.

FELIX BRANNIGAN,
Assistant Attorney.
CHARLES H. ALDRICH,
Solicitor-General.

147 U.S. 676

Office Supreme Court U. S.
FILED.
DEC 15 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
H. H. KING, APPELLEE.
No. 628.

Appeal from the District Court of the United States for the Southern District of Georgia.

BRIEF FOR APPELLEE.

CHARLES C. LANCASTER,
Counsel for Appellee.

MITCHELL, PRINTER.

IN THE

Supreme Court of the United States.

October Term, 1892.

THE UNITED STATES, APPELLANT,
vs.
H. H. KING, APPELLEE. } No. 628.

Appeal from the District Court of the United States for the Southern District of Georgia.

FEES OF CLERK UNITED STATES COURT.

BRIEF FOR APPELLEE.

It is contended on behalf of the appellee that all the items of charges included in the judgment of the court below are clearly authorized by the provisions of section 828, Revised Statutes of the United States.

The necessity and legality of the services are so forcibly established in the learned opinion of the court below that little can be added.

Similar charges were allowed by the same court in Erwin *vs.* U. S., 37 Fed. Rep., 470, from which no appeal was taken by the United States.

The principles involved in this case have been fully sustained by this Court in the Van Duzee case, 140 U. S., 169, 199.

The approval of the Court is conclusive in the absence of clear and unequivocal proof of mistake. U. S. *vs.* Jones, 134 U. S., 483.

It is submitted that the appellant has failed to show any mistake in the approval of the Court, and that the judgment of the court below should be affirmed.

CHARLES C. LANCASTER,
Counsel for Appellee.